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THE
REVISED STATUTES

OF

NOVA-SCOTIA.

THIRD SERIES.

PREPARED BY

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COMMISSIONERS FOR REVISING AND CONSOLIDATING THE STATUTES
OF THE PROVINCE.

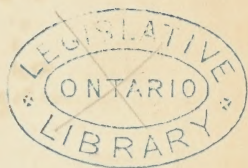
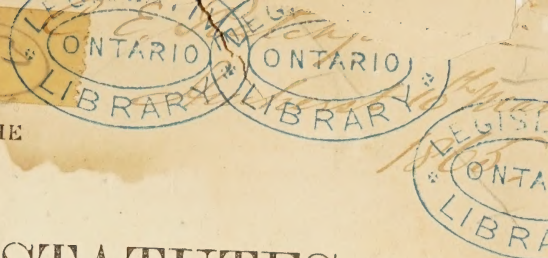
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1092866



AN ACT TO PROVIDE FOR THE PUBLICATION OF THE CONSOLIDATED STATUTES.

(Passed on the 10th day of May, A. D., 1864.)

Be it enacted by the Governor, Council, and Assembly,
as follows ;

1. The Governor in Council shall cause the general acts passed during the present session, to be arranged under appropriate titles and chapters with the following words prefixed, that is to say :

" An act for Revising and Consolidating the General Statutes of Nova Scotia. Be it enacted by the Governor, Council, and Assembly, as follows : "

and the same shall be published in consolidated form, with a copious index, as soon as the same can be conveniently done ; and when the same shall be so published, the governor shall, by proclamation, declare the acts so consolidated to be in force, and the same, or so much thereof as shall not be then in operation, shall thereupon and thereafter become and be in force.

2. But chapters of the said consolidated statutes may be brought into earlier operation by being published in the royal gazette, by order of the governor in council ; and chapters so published shall take effect from such publication, or from the time otherwise expressed in any proclamation of the governor respecting the coming into operation of the same.

3. Acts passed during the present session to which the assent of the governor has been or shall be given separately, come into operation from the time, when, by law or the enactment of the said acts, the same are appointed to come into force ; but, nevertheless, such of the said acts as are of a general character, shall be arranged among and incorporated with the consolidated statutes.

4. All acts in force on the first day of the present session, which shall not since have expired or have been repealed by some such separate act as mentioned in the

third section, or by some such chapter published in advance as mentioned in the second section, shall continue in force, subject to any amendments which may have been made thereto by any such separate act or chapter published in advance until the publication of the consolidated acts by proclamation as aforesaid; and the same acts so continued in force shall, upon and after such publication of the consolidated acts, be repealed and cease to have any force or effect, except the acts hereinafter named, and also except such chapters of the revised statutes, second series, and such acts as shall not be substantially incorporated in the said consolidated statutes, and which will not have been repealed or have expired.

5. The following acts are continued in force notwithstanding and after the publication of the consolidated statutes, that is to say:

The second part of chapter twenty-seven of the revised statutes, second series, entitled, "of the Coal Mines."

Chapter forty, of the same series, entitled, "of Sheriffs."

Chapter eighty-two, of the same series, entitled, "of Interest."

Chapter eight, of the same series, entitled, "of Scrutinies."

Chapter twenty-eight of the acts passed in 1863, entitled, "an act to regulate the Election of Members to serve in the General Assembly,"—except as the same, or any clause or section thereof, is or may have been altered, amended or repealed during the present session.

Chapter two of the acts of 1862, "for the Incorporation and winding up of Joint Stock Companies."

Chapter sixty-three of the Revised Statutes, "of Surveyors of Highways and Highway Labor, except in Halifax." Amended by chapter forty, acts of 1860.

Chapter twelve, part second, "of a certain Treaty between Her Majesty and the United States of America."

Chapter one hundred and thirteen, "of the Registry of Deeds and incumbrances affecting Lands."

Chapter one hundred and fifteen, "of the Descent of Real and Personal Estate."

6. All such other chapters of the revised statutes, second series, and all such other acts, which shall not have been repealed or have expired, and which shall not be substantially incorporated in the said consolidated statutes when the same shall be published, shall also be continued in force, notwithstanding and after the publication of the consolidated statutes.

7. Nothing herein contained shall affect or include local or private acts.

8. All rights accruing or accrued under any of the statutes so repealed are reserved, and all penalties incurred thereunder, shall be enforced as if such statutes had not been repealed.

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PROVINCE OF NOVA-SCOTIA.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED
AND SIXTY-FOUR.

AN ACT

FOR REVISING AND CONSOLIDATING THE
STATUTES AND LAWS OF THE
PROVINCE.

THIRD SERIES.

BE IT ENACTED, BY THE GOVERNOR, COUNCIL AND
ASSEMBLY, as follows :

CHAP. 1.

PART I.

OF THE INTERNAL ADMINISTRATION OF THE GOVERNMENT.

TITLE I.

CHAPTER 1.

OF THE PROMULGATION AND CONSTRUCTION OF STATUTES.

1. All acts shall be deemed public, and may be declared on, and given in evidence without being specially pleaded.
2. The clerk of the legislative council shall endorse on every act the date of its passage, and the endorsement shall be held part of the act, and shall be the date of its commencement, unless otherwise provided.
3. Printed copies of acts published in the royal gazette newspaper, in Halifax, or purporting to be published by the queen's printer for the province, shall be evidence of such acts.
4. Any act may be altered or repealed during the session in which it shall have passed.
5. No act nor any portion of an act that shall be repealed, shall be revived, unless by express enactment.
6. Where an act shall be repealed in whole or in part, and other provisions substituted, all persons acting under the old law shall continue to act as if appointed under the new law, until others are appointed in their stead, and all proceedings taken under the old law shall be taken up and continued under the new, when not inconsistent therewith; and all penalties may be recovered and proceedings had, in relation to matters which have happened before the repeal, in the same manner as if the law were still in force.
7. In the construction of acts, the following rules shall be observed, unless otherwise expressly provided for, or such construction would be inconsistent with the manifest intention of the legislature, or repugnant to the context, that is to say:
- The words "queen" or "her majesty" shall include her majesty, her heirs or successors.
- "Governor" and "lieutenant governor" shall include the governor, lieutenant governor or commander-in-chief, or person administering the government of the province for the time being.
- "Sessions" shall denote the court of general or quarter sessions of the peace for the county or district, and "special session" shall denote a special sessions of the peace for the county or district.

All acts public.

Date of commencement.

Publication how evidenced.

Repeal or alteration the same session.

Revived by express enactment only.

Proceedings under old acts continued under new.

Construction of acts: meaning of terms; general provisions.

"Justice" shall signify justice of the peace.

"Prothonotary" shall include deputy prothonotary.

"Clerk of the crown" shall include deputy clerk of the crown.

"Jail" shall mean county jail, and where imprisonment is prescribed it shall mean imprisonment in the jail or other building within the county in which debtors may be legally imprisoned.

"Warrant" shall signify warrant under hand and seal.

"Grantor" may be construed as including every person from whom any freehold estate or interest passes by deed; and "grantee" as including every person to whom any such estate or interest passes in like manner.

"Land," "lands," or "real estate," shall include lands, tenements, and hereditaments, and all rights thereto and interest therein.

"Goods" shall mean personal property.

"Issue" as applied to the descent of estates, shall be construed to include all lawful, lineal descendants of the ancestor.

"Representatives" shall mean executors and administrators.

"Wills" shall include codicils.

"Month" shall signify a calendar month, and "year" a calendar year; and "year" alone shall be equivalent to the expression "year of our Lord."

"Oath" shall include affirmations in cases where by law an affirmation may be substituted for an oath; and in the like cases the word "sworn" shall include the word "affirm."

"Person" may extend to bodies politic and corporate as well as to individuals.

"Folio" shall mean ninety words.

"Sureties" shall mean sufficient sureties, and "security" shall mean sufficient security; and where these words are used one person shall be sufficient therefor, unless otherwise expressly required.

Every word importing the singular number only may extend to several persons or things as well as to one person or thing; and every word importing the plural number only, may extend to one person or thing as well as to several persons or things; and every word importing the masculine gender only, may extend to females as well as to males.

All words purporting to give a joint authority to three or more persons, shall be construed as giving authority to a majority of such persons.

8. Where a penalty shall be imposed, and no particular mode be prescribed for the recovery thereof, the same may be recovered in the name of any person who will sue therefor, in the same manner, and with the like costs, as

Penalties, how recovered and appropriated.

CHAP. 1. if it were a private debt due such person, the nature of the offence being briefly stated in the summons, and where no particular mode of applying any penalty shall be prescribed, the same shall be paid, one-half to the person who shall have sued therefor, and the other half to the overseers of the poor for the place where the offence was committed, for the use of the poor thereof; and where a penalty, or part thereof, shall be for the use of the poor, it shall be paid to the overseers of the poor for the place where the offence was committed, for the use of the poor thereof.

Appeals.

The imposition of a penalty shall not relieve any person from liability to answer for special damages to a party injured. Appeals to the supreme court shall be allowed by justices of the peace, from every judgment given by them in all cases tried before them, in the same manner and on the same terms as are provided in civil suits, except where otherwise specially provided.

All penalties and forfeitures, not exceeding forty dollars, may be sued for and recovered before any two justices of the peace; but if incurred within the city of Halifax, before the mayor's court.

Prosecutions for such penalties or forfeitures may be in the name of any person, or of any corporate body.

Authority to fill vacancies.

9. Where authority to make appointments to public situations is conferred, it shall include the power to fill up vacancies caused by death, resignation, removal, or refusal to act.

Bye laws, power to make and alter.

10. Where power to make bye-laws, regulations, rules or orders is conferred, it shall include the power to alter or revoke the same, and make others. No bye-law shall be enforced if repugnant to law.

County charges how recovered.

11. When it is declared that any matter is to form a county charge, the expense shall be presented, confirmed, assessed, levied and collected with and by the same means as by law directed with regard to other monies for county purposes.

Forms.

12. Where forms are prescribed, slight deviations therefrom, not affecting the substance or calculated to mislead, shall not vitiate them.

Sunday, &c.

13. If the day upon which an act is to be done shall fall on a Sunday, Christmas Day, or Good Friday, the same shall be performed on the day following.

Justices to administer oaths.

14. Justices of the peace may administer all oaths, with regard to the taking of which no particular directions are given.

Quakers, &c., how sworn.

15. Quakers or Moravians, where an oath is prescribed, may instead of taking the same, solemnly affirm in manner used in their religion; and such affirmations shall have the like effect, and render the parties taking them liable to the like penalties, if false, as attach to an oath.

Bonds of public officers.

16. When bonds are required to be given by a public

officer, they shall be taken in her majesty's name when not otherwise directed. CHAP. 2.

17. Sureties to any such bond may at any time give to the Provincial Secretary notice of their desire to withdraw from liability thereunder, and in such case the liability of the sureties for any act committed or dereliction of duty after the expiration of three months from the receipt of such notice shall cease. Principals shall in such cases be required to furnish new security, in the same manner as if bonds had not been previously executed. Withdrawal of sureties.

18. All officers now appointed or hereafter to be appointed by the governor, whether by commission or otherwise, shall remain in office during pleasure only, unless otherwise expressed in their commissions or appointments. Officers appointed during pleasure.

TITLE II.

OF THE LEGISLATURE.

CHAPTER 2.

OF EXECUTIVE AND LEGISLATIVE DISABILITIES.

1. No person shall be capable of being appointed to, or of sitting or voting in, the legislative council of this province, or of being elected to, or sitting or voting in, the house of assembly, who shall at the time of such appointment to the legislative council, or at the time of of his being nominated a candidate at such election, hold under the government of this province any one of the following offices, that is to say :

- Judge of the supreme court,
- Judge of the court of vice admiralty,
- Judge of probate or registrar of probate,
- Post master general, post master or deputy post master—
- not to include way office keeper,
- Chairman of board of works,
- Commissioner of crown lands,
- Deputy surveyor of crown lands,
- Queen's printer,
- Registrar of deeds,
- Prothonotary,
- Gold commissioner or deputy gold commissioner,
- Officer or clerk of the customs, or of colonial or light duties, or person concerned in the receiving or managing of any monies to be collected under any of such departments ; but nothing herein contained shall be held to affect the office of receiver general or financial secretary.

Persons incapable of sitting or voting in Legislative Council or House of Assembly.

CHAP. 3. Medical superintendent of the provincial hospital for the insane,
 Supervisor of great roads,
 Railroad contractor.

May resign previous to appointment or nomination.

2. No person shall be considered as holding any such office who shall, previously to the day of appointment or of nomination, have resigned the same, and intimated such resignation to the provincial secretary.

Members accepting office vacate their seats.

3. Any member of the legislative council, or of the house of assembly, accepting any one of such offices after his appointment or nomination shall vacate his seat thereby.

Appointment, election, &c., void.

4. The appointment, nomination, election, or return, of persons disabled as herein mentioned, shall be void, and every person so disabled who shall sit or vote as a member of the legislative council or of the house of assembly, shall forfeit four hundred dollars for every day he shall so sit or vote, to be recovered in the supreme court.

Penalty.

Seat of departmental officers not vacated by resignation of office if another is accepted within a month.

5. When any person holding the office of receiver general, provincial secretary, financial secretary, attorney general, solicitor general, and being at the same time a member of the house of assembly, shall resign his office and within one month after his resignation accept of any other of such offices, he shall not thereby vacate his seat in such assembly.

CHAPTER 3.

OF THE DURATION OF AND REPRESENTATION IN THE GENERAL ASSEMBLY.

Duration of assembly not affected by the queen's death.

Duration of assembly limited.

1. No general assembly shall determine merely in consequence of the demise of her majesty.

2. The general assembly shall continue four years from the expiration of forty days next after the issuing of writs for any general election, unless sooner dissolved, and no longer.

Number of county and township members.

3. The representation in general assembly, shall be as follows:

For the counties of Richmond, Cape Breton, Victoria, Antigonishe, Guysborough, each two members.

For the counties of Inverness, Lunenburg, Cumberland, Annapolis, and Digby, each three members.

For the counties of Yarmouth, Queens and Shelburne, each one county member.

For the townships of Yarmouth, Argyle, Shelburne, and Barrington, each one member.

4. The counties of Hants, Colchester, Pictou, and Kings shall be represented by four members each, and the county of Halifax by five members, and each of said counties shall be divided into two electoral divisions as follows:

I. The two electoral divisions of the county of Halifax shall be called, respectively, the western electoral division and eastern electoral division of the county of Halifax. The western electoral division shall comprise the township of Halifax, including the city of Halifax, and shall embrace the polling districts of numbers one, two, three, four, number one of ward number five, and number two of ward number five and six in the city, and numbers seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, and sixteen, in the rest of the township, and the electors of the said western division shall return three members to serve in the general assembly;—and the eastern electoral division shall comprise the rest of the county of Halifax, including the polling districts numbers seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, and thirty-four,—and the electors of the said eastern division shall return two members to serve in general assembly.

Halifax, namea
and divisions.

Western defi-
ned, number of
members.

Eastern defi-
ned, number of
members.

II. The two electoral divisions of the county of Hants shall respectively be called the northern electoral division and the southern electoral division of the county of Hants. The northern division shall comprise the polling districts numbers four, six, seven, nine, and eleven, as at present defined; and the southern division shall comprise the polling districts numbers one, two, three, five, eight, ten, and twelve, as at present defined; the electors of each of the said divisions shall elect and return two representatives to serve in general assembly.

Hants, names
of divisions.

Northern defi-
ned.

Southern defi-
ned.

Number of
members.

III. The two electoral divisions of the county of Colchester shall respectively be called the northern electoral division and the southern electoral division of the county of Colchester. The northern division shall comprise the present polling districts numbers six, eight, nine, ten, eleven, twelve, and thirteen; and the southern division shall comprise the present polling districts numbers one, two, three, four, five, and seven. The electors of each of the said divisions shall elect and return two representatives to serve in general assembly.

Colchester—
names of divi-
sions.

Northern defi-
ned.

Southern defi-
ned.

Number of
members.

IV. The two electoral divisions of the county of Pictou shall respectively be called the western electoral division and the eastern electoral division of the county of Pictou. The western electoral division shall comprise the township of Pictou, and shall embrace the following polling districts: numbers one, two, three, four, five, six, seven,

Pictou, names
of divisions.

Western defi-
ned.

CHAP. 4.

Eastern defined.

Number of members.

Kings, names divisions.

Line of division.

Northern defined.

Southern defined.

Number of members.

Queens, names of divisions.

Boundaries of counties, &c., as heretofore.

eight, nine, ten, and eleven; and the eastern electoral division shall comprise the townships of Egerton and Maxwellton, and the rest of the county of Pictou, and shall embrace the polling districts numbers twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, and twenty-two. The electors of each of the said electoral divisions shall elect and return two representatives to serve in general assembly.

5. The two electoral divisions in the county of Kings shall respectively be called the northern electoral division and the southern electoral division of the county of Kings, which two divisions shall comprise the whole county, and be divided by a line described as follows, that is to say: by the line separating the townships of Horton and Cornwallis from the Basin of Minas up the Cornwallis river as far as the river is the division of these townships near Kentville, and thence continuing along the centre of the river to its source in the Carriboo Bog, thence west to the line dividing Cornwallis and Aylesford, thence southerly by that line to the centre of the main post road, thence by the centre of the said road westwardly to the line separating the counties of Kings and Annapolis. All that portion of the county of Kings which lies to the northward of the said line, shall be the northern electoral division, and all that portion which lies to the southward of said line shall be the southern electoral division. The electors of each of the said electoral divisions shall elect and return two representatives to serve in general assembly.

5. The county of Queens shall be divided into two electoral divisions, to be called, respectively, the northern division and the southern division, each of which shall return one member. The southern division shall include electoral districts numbers one, two, three, and four, and the northern division numbers five and six.

6. The boundaries of counties, townships, electoral divisions and polling districts, for the purposes of this chapter, shall be the same as are now established.

CHAPTER 4.

OF THE PREVENTION OF CORRUPT PRACTICES AT ELECTIONS.

Expenses for entertainment, &c., not recoverable from candidate or his agent.

Penalty for candidate furnishing intoxicating liquors.

1. No person shall recover from a candidate or his agents for entertainment furnished at the request of any of them to other persons at an election; and if, upon trial, it shall appear that any part of the plaintiff's claim is for entertainment so furnished, he shall be non-suited.

2. If a candidate during an election shall furnish, or willingly permit to be furnished, to an elector or person

claiming to be an elector, any intoxicating liquors, he shall forfeit four hundred dollars. CHAP. 4.

3. The following persons shall be deemed guilty of bribery, and shall be punishable accordingly :—

I. Every person who shall directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure, or to endeavour to procure, any money or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

Persons deemed guilty of bribery.

Any person giving, promising, &c. money or valuable consideration to voter or other person to induce voter to vote, or refrain from voting.

II. Every person who shall directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure, or to endeavour to procure, any office, place or employment, to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid on account of any voter having voted or refrained from voting at any election.

Any person giving, promising &c. office or employment to voter, or other person, to induce voter to vote or refrain from voting.

III. Every person who shall directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure, the return of any person to serve in general assembly, or the vote of any voter at any election.

Any person making gift, loan, offer, &c., to any one to induce him to procure return of candidate, or vote.

IV. Every person who shall, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procure or engage, promise or endeavour to procure, the return of any person to serve in general assembly, or the vote of any voter at any election.

Person promising to procure return, or vote in consequence of gift, &c.

V. Every person who shall advance or pay, or cause to be paid, any money to or to the use of any other person, with the intent that such money, or any part thereof, shall be expended in bribery at any election; or who shall knowingly pay, or cause to be paid, any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election.

Person advancing or repaying money to be used or already expended in bribery.

And any person so offending shall be guilty of a misdemeanor, and shall also be liable to forfeit the sum of four hundred dollars to any person who shall sue for the same, together with full costs of suit; provided always, that the aforesaid enactment shall not extend, or be construed to extend, to any money paid or agreed to be paid for or on account of any legal expenses *bona fide* incurred at or concerning any election.

Penalty.

Proviso.

CHAP. 4.

Other persons guilty.
Voter receiving or agreeing to receive money, &c., for voting or refraining to vote.

Person after election receiving money, &c., on account of person having voted or refrained from voting.

Penalty.

Penalty for using violence to, intimidating or interfering with, voters.

Penalties—how recovered.

Court may order payment of costs of prosecution.

Defendant entitled to his costs if judgment in his favor.

4. The following persons shall also be deemed guilty of bribery, and shall be punishable accordingly :

I. Every voter who shall, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receive, agree, or contract for, any money, gift, loan, or valuable consideration, office, place, or employment, for himself, or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election.

II. Every person who shall, after an election, directly or indirectly, by himself or by any other person on his behalf, receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election.

And any person so offending shall be guilty of a misdemeanor, and shall also be liable to forfeit the sum of forty dollars to any person who shall sue for the same, together with costs of suit.

5. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make use of, or threaten to make use of, any force, violence, or restraint, or inflict, or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practice intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election ; or who shall by abduction, duress, or any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce, or prevail, upon any voter, either to give or refrain from giving his vote at any election ; shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanor, and shall also be liable to forfeit the sum of two hundred dollars to any person who shall sue for the same, together with the costs of suit.

6. The pecuniary penalties hereby imposed for the offences of bribery or undue influence, respectively, shall be recoverable by action or suit in the supreme court by any person who shall sue for the same.

7. It shall be lawful for the court, in cases of prosecution for any offence against the provisions of this chapter, to order payment to the prosecutor of such costs and expenses as to the court shall appear to have been reasonably incurred in and about the conduct of such prosecutions.

8. In case of any indictment or information by a private prosecutor for any offence against the provisions of this act, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the

costs, to be taxed by the court, sustained by the defendant CHAP. 4.
by reason of such indictment or information.

9. It shall not be lawful for the court to order payment of the costs of a prosecution for any offence against the provisions of this chapter unless the prosecutor shall, before or upon the finding of the indictment or the granting of the information, enter into a recognizance with two sufficient sureties in the sum of five hundred dollars, with the conditions following, that is to say, that the prosecutor shall conduct the prosecution with effect, and shall pay to the defendant or defendants, in case he or they shall be acquitted, his or their costs.

Prosecutor must enter into recognizance, or not be entitled to costs.

10. No person shall be liable to any penalty or forfeiture hereby enacted or imposed, unless some prosecution, action, or suit, for the offence committed shall be commenced against such person within the space of six months next after such offence against this act shall be committed, and unless such person shall be summoned or otherwise served with writ or process within the same space of time, so as such summons or service of writ or process shall not be prevented by such person absconding or concealing himself, or withdrawing from the province; and in case of any such prosecution, suit, or process as aforesaid, the same shall be proceeded with and carried on without any wilful delay.

Limitation of actions.

11. If any candidate returned at an election for any county, electoral division, or township, shall be declared by the report of any election committee guilty, by himself or his agents, of bribery or undue influence at such election, the seat of such candidate shall, by such report, be forthwith vacated.

Seat of candidate guilty of bribery, &c., vacated.

12. In an action for recovery of a forfeiture under this chapter it shall suffice for the plaintiff to declare that the defendant is indebted to him in the amount of the forfeiture, and to allege the particular offence for which the action is brought, and that the defendant hath acted therein contrary to this chapter, without mentioning the writ for holding the election or the return thereof.

Form of action.

13. In citing this chapter it shall be sufficient to use the expression, "the corrupt practices prevention" chapter.

Title of ac

14. Throughout this chapter, in the construction thereof, except there be something in the subject or context repugnant to such construction, the word "election" shall mean the election of any member or members to serve in the assembly; and the word "voter" shall mean any person who has or claims to have a right to vote in the election of a member or members to serve in the assembly; and the words, "candidate at an election," shall include all persons elected as members to serve in the assembly at such election, and all persons nominated as candidates, or who shall have declared themselves candidates at or before such election.

Meaning of words, &c., used in act.

CHAP. 5.

CHAPTER 5.

OF CONTROVERTED ELECTIONS.

Proceedings on
petition against
a return.

1. When a petition complaining of an undue election, or return of a member to serve in the house of assembly, shall be presented to the house, a day and hour shall be appointed by the house for taking the same into consideration, and notice in writing shall be forthwith given by the speaker to the petitioner and the sitting member, or their agents, accompanied with an order to them to attend the house at the time appointed, by themselves, their counsel, or agents, and if at the time appointed none of the petitioners shall appear, either personally, or by counsel, or agent, the order for taking the petition into consideration shall be discharged, and the petition shall not be further proceeded in. No such petition shall be received after fourteen days shall have elapsed from the time that the member whose return is complained of shall have taken his seat.

Bond required.

2. No proceeding shall be had on a petition unless at or before the time appointed for consideration thereof at least one of the petitioners shall enter into a bond to her majesty, with sureties, in the sum of eight hundred dollars, for the payment of the costs and expenses that may become payable by the petitioners, under any report of committee on the petition; the bond, in case of non-payment, to be put in suit for the benefit of the parties entitled to the costs and expenses.

Proceedings on
undefended re-
turn.

3. If before the day appointed for considering the petition the member whose return is complained of shall die, or accept the office of legislative councillor, or declare, under his hand, his intention not to defend his return, the speaker shall give notice thereof in writing to the sheriff of the county where the election was had, and shall also notify the same in two public newspapers, so that any of the freeholders of the county or township for which the member was returned may, if they think fit, petition the house to be admitted as parties in the room of the member, and they shall thereupon be so admitted as parties, and stand, as respects the controversy, in the place of the sitting member.

Proceedings at
the time for
considering the
petition.

4. At the time appointed for considering the petition, and previous to reading the order of the day therefor, the speaker shall direct the sergeant-at-arms to go to the places adjacent and require the immediate attendance of members on the business of the house; and after his return the house shall be counted, and if there are less than thirty-

three members present the order shall be adjourned to a particular hour on the following day, when the house shall proceed in the same manner, and so, from day to day, until there shall be in attendance thirty-three members at the reading of the order.

5. When thirty-three members shall be present, the petitioners, their counsel or agents, and the council or agents of the sitting member, shall be ordered to attend at the bar, and then the door of the house shall be locked, and no member shall be suffered to enter into or depart from the house until the drawing shall be completed. The order of the day shall then be read, and the names of the members written on distinct pieces of paper, and, as nearly as may be, of equal size, and rolled up in the same manner, shall be equally divided, and put into two several boxes placed on the table, and shall be shaken together, and the clerk shall publicly draw out of the boxes alternately the pieces of paper and deliver them to the speaker to be read to the house until fifteen names of members then present be drawn.

Committee—
how drawn.

6. If the name of a member who shall have voted at the election complained of, or against whose return a petition shall be depending shall be drawn, it shall be set aside.

Names of members voting at election, or petitioned against to be set aside.

7. If a member drawn shall verify, on oath, an excuse, the substance thereof shall be taken down by the clerk, in order that the same may afterwards be entered on the journals, and the opinion of the house shall be taken thereon, and if they shall resolve that the member is unable to serve, or cannot, without great detriment, serve on the committee, he shall be excused therefrom.

Members how and when excused.

8. If the name of a member then serving on one election committee be drawn, he shall be excused from serving on a second.

Members serving on a committee to be excused.

9. When members are set aside or excused, others shall be drawn in their place, who may in like manner be set aside or excused and others drawn in their place until the whole number of fifteen members not liable to be set aside or excused shall be complete.

When members excused other names to be drawn.

10. When the drawing shall be completed the door of the house shall be unlocked, and lists of the fifteen members shall be given to each party, and they shall immediately retire with the clerk or his assistant, and each party, his counsel or agent, beginning on the part of the petitioners, shall alternately strike off one of the fifteen members until the number shall be reduced to seven; and the clerk or assistant, within one hour at farthest from the time of the lists being given, shall deliver into the house the names of the seven members then remaining. And the seven members shall be sworn at the table "well and truly to try the matter of the petition referred to them, and a true judgment to give according to the evidence,"

Committee how struck; to be sworn; how adjourned.

CHAP. 5. and shall be a committee to determine the election; and the house shall by order direct them to meet at a certain time, and the place of their meeting shall be in a committee room of the house, and they shall sit every day, and shall not adjourn for more than a day without leave of the house, upon special cause assigned.

Committee how appointed and struck in undressed cases.

11. If at the time appointed for considering the petition the sitting member shall not appear by himself, or his counsel or agent, the committee shall be appointed as follows: the names of fifteen members shall be drawn in manner hereinbefore prescribed, but in reducing the lists the clerk or clerk's assistant shall stand in the place of the sitting member; and the same method of reducing the number shall be followed whenever a party waives his right of striking off names.

Chairman how selected.

12. The committee shall, on meeting, select a chairman, and if in the selection, the voices are equal, the member whose name was first drawn in the house shall have an additional casting vote; and the same course shall be pursued, if necessary, to elect a new chairman, on the death or necessary absence of the previous chairman.

Powers and duty of committee.

13. The committee shall have power to send for persons and papers, and shall examine witnesses on oath, and shall consider evidence and proceedings duly had on a scrutiny, and referred to them by the house, and may admit additional evidence sworn to be material, and which in their judgment ought to be received; and shall determine whether the petitioner or the sitting member, or either of them, is duly returned or elected, or whether the election is void, or whether a new writ ought to issue; and their determination shall be final, and the house on being informed thereof by the chairman of the committee, shall order the same to be entered on the journals, and give the necessary directions for carrying the determination of the committee into execution.

Committee may report specially

14. If the committee shall come to any resolution other than the determination above mentioned, they may report the same to the house for their opinion, and the house may confirm or disagree with the resolution, and make order thereon as they may think proper.

Committee man absents himself.

15. No member of the committee shall absent himself therefrom without leave of the house, and the chairman shall report the name of a member so absents himself, who shall, for his neglect, be punished or censured at the discretion of the house; and the committee shall never proceed unless five members are present.

Where committee reduced to less than five.

16. If the members of the committee shall be unavoidably reduced to less than five, and shall so continue for three days, the committee shall be dissolved, and another chosen in like manner; but the evidence already taken shall be considered by the new committee.

17. If persons summoned by the committee shall disobey the summons, or if witnesses before the committee shall prevaricate or misbehave in giving or refusing to give evidence, the chairman may, by direction of the committee, report the same to the house for the interposition of their authority or censure.

CHAP. 5.

Disobedience
to summons of
committee.

18. When the committee shall think it necessary to deliberate among themselves, they may, after hearing the evidence and counsel on both sides, direct the room to be cleared.

Their power
and discretion
in certain cases

19. Decisions of the committee shall be made by a majority of voices, and if the voices be equal, including the chairman, he shall have an additional casting vote.

A majority of
voices shall de-
cide.

20. The oaths by this chapter directed to be taken in the house shall be administered by the clerk or his assistant, and those before the committee by the chairman.

Oaths how ad-
ministered.

21. If the general assembly shall be prorogued while a committee shall be sitting, the committee shall not be dissolved, but shall be thereby adjourned to twelve o'clock on the fourth day following that on which the assembly shall meet again in session, and the former proceedings of the committee shall remain in force, and the committee shall meet at the time to which it shall be so adjourned, and continue to act as if there had been no prorogation.

Effect of proro-
gation while a
committee sit-
ting.

22. The committee when they report their final determination to the house, shall also report whether the petition did or did not appear to them frivolous or vexatious, and also whether the opposition thereto did or did not appear to them frivolous or vexatious; and such report shall be signed by the majority concurring therein.

Committee to
report whether
the petition was
frivolous.

23. When a petition shall be reported frivolous or vexatious, the sitting member shall be entitled to recover from the petitioners, or any of them, the expenses of opposing the same.

If a petition re-
ported frivo-
lous, expenses
recoverable.

24. When the opposition to a petition shall be reported frivolous or vexatious, the petitioners shall be entitled to recover from the sitting member the expenses of prosecuting such petition.

If opposition re-
ported frivo-
lous.

25. The expenses of prosecuting or opposing a petition shall include witnesses' fees as well as other costs and expenses, and shall be ascertained as follows: the speaker, on application, shall direct them to be taxed by the clerk of the house and a master of the supreme court, who shall tax the same and report the amount to the speaker, who, on the approval of the house, or of such part thereof as the house may allow, shall, on application, deliver to the parties a certificate under his hand, expressing the amount of the expenses allowed; and the persons appointed to tax the expenses and report the amount shall be entitled to such fees, to be paid by the parties for whom the bill is taxed, and included therein, as may be fixed by resolution of the house.

Expenses how
taxed.

CHAP. 6.

Expenses how recovered.

26. The parties entitled to expenses, or their representatives, may demand the amount certified from any of the persons liable therefor, and on non-payment may recover the same by action of debt in the supreme court, wherein it shall be sufficient for the plaintiffs to declare that the defendants are indebted to them in the amount certified by virtue of this chapter; and the certificate signed by the speaker shall have the effect of a warrant to confess judgment, and the court shall on motion, and the production of the certificate, enter judgment for the plaintiffs for the amount specified in the certificate in the like manner as if the defendants had signed a warrant to confess judgment in the action for that amount.

A party paying may recover a rateable contribution.

27. Where the expenses shall have been recovered from any person, he may recover in like manner from others, liable to the payment of the same expenses, a proportionable share thereof, according to the number liable.

Explanation of the word sitting member.

28. The word "sitting member," when used in this chapter, shall also comprehend parties admitted to oppose a petition.

CHAPTER 6.

OF VACATING SEATS.

Seats how vacated.

1. Any member of the house of assembly may by written notice to the provincial secretary, or speaker of the house if in session, vacate his seat.

Offices which vacate seats.

2. If any member shall accept of any of the following offices, his seat shall become vacant, but he may be re-elected; that is to say, the offices of attorney general, solicitor general, provincial secretary, receiver general, financial secretary; but if any person holding either of the above offices and being at the same time a member of the house of assembly shall resign his office and within one month after his resignation accept of the same or of any other of such offices, he shall not thereby vacate his seat in such assembly.

Vacancies how supplied.

3. Whenever a seat shall become vacant a writ shall be issued to supply the vacancy.

Speakers seat how vacated.

4. The speaker may vacate his seat as speaker and member. either by a declaration to that effect in the house if in session, or by written notice to the provincial secretary, in which case a writ shall be issued to supply the vacancy.

TITLE III. OF THE PUBLIC REVENUE.

CHAPTER 7.

OF THE CASUAL AND TERRITORIAL REVENUE.

1. The proceeds of all the casual and territorial revenues of the crown in the province, as hereafter designated, shall be paid into the provincial treasury. Casual and territorial revenue where paid.

2. The several casual and territorial revenues of the crown, and the monies and funds and other rights which are placed at the disposal of the general assembly for the use of the province, under and by virtue of this chapter, are declared to be—all rents, sums of money, returns, profits, and emoluments, arising, reserved, due, owing, or in any manner whatsoever which shall have heretofore accrued and shall be in hand, or shall be hereafter to be received in respect of any lease, demise, sale, grant, transfer, or occupation of any of the crown lands, mines, minerals, or royalties of her majesty within the province, whether in the island of Cape Breton or in any other part of the province, of whatsoever nature or description; and also all fees and payments and commutation therefor, at the office of the secretary of the province, received or payable, in respect of any writings, licenses, instruments, commissions, or patents, there made or issued, and on which fees were heretofore payable for the lieutenant governor and secretary of the province; and lastly, all fines, penalties, and forfeitures, under any law of the province imposed and applicable for the use of her majesty. Of what it consists.

3. All the right and title of her majesty, whether in reversion or otherwise, of, in, to, and out of all mines, minerals, and oils whatsoever, within the province, including the island of Cape Breton, and also all rents and profits arising therefrom, are hereby assigned, transferred, and surrendered, to the disposal of the general assembly of this province, subject only to the existing rights of the lessees, and persons entitled under existing statutes, and of all persons claiming under them or any of them, and shall be managed, leased, disposed of, made available, paid and applied in such manner, and to and by such officers and persons and for such public uses and purposes as by any act of the general assembly for the time being shall be directed. Transfer of mines and minerals.

4. The general assembly may provide for the managing, collecting, and receiving of the revenues, and other Management provided for.

CHAP. 8. matters hereby surrendered and transferred, and for appointing proper officers for the revenues.

Collection provided for.

5. For the more easy collection of such revenues, the officers or persons charged with the collection or management of the revenue, may in the name of her majesty, but to the use of the province, take all such lawful ways and means, by information, suit or proceeding at law or in equity, as by or on behalf of her majesty, might be adopted in respect of the revenues, or any of the lands, mines, or royalties chargeable therewith, if the surrender, transfer, and assignment had never been made for the use of the province.

Proceeds of crown lands where payable

6. Nothing herein contained shall interfere with the grant, sale, lease, or disposal of any of the ungranted lands of the crown in this province, except only the mines and minerals hereinbefore specified by or on behalf of her majesty, but all such grants, sales, leases, or disposal of such ungranted lands, and the management, direction or control thereof, shall remain in such officers as her majesty shall deem proper, or as may be directed by any law of this province, and the nett proceeds only of such grants, sales, leases, or disposals of such ungranted lands, after deducting the necessary expenses of managing the same, shall be paid over to the treasury of the province; but an account of such expenses shall be annually submitted to the general assembly, and the salary or allowance of the officers employed, and the expenses of the department, be subject to the control and regulation of the general assembly, and no other or greater salary or allowance or expenses shall be taken than such as shall be allowed thereby.

7. This chapter shall continue in operation until eighteen months after the demise of her present majesty (whom God long preserve), and thereafter everything herein contained, and the transfer, surrender, and assignment hereby made, shall cease and determine.

Continued & amended at the Town Engineer 1865

CHAPTER 8.

Cap. 22.

Part the First.

OF CUSTOMS DUTIES.

Date of operation and duration of chapter

1. This chapter shall come into operation on the first day of April, in the year one thousand eight hundred and sixty-four, and shall continue in force until the first day of April, one thousand eight hundred and sixty-five.

2. There shall be collected and paid to her majesty for the use of the province upon all goods brought into this province, by sea or land carriage, the several duties in currency set forth in figures on the table hereinafter contained, denominated "table of duties," opposite the respective articles in such table mentioned, according to the value, number, or quantity of every such article. CHAP. 8.
Payment of
duties provided
for.
3. The goods mentioned in the table hereinafter contained, denominated "table of exemptions," shall be free of duty. Exemptions.
4. The duties shall be collected, paid, and received, and the proceeds thereof applied under the provisions of the provincial statutes from time to time in force concerning the same. Duties—how
collected and
applied, &c.
5. The duties shall be collected, paid, and received according to the weights and measures in use in this province, and where in the table of duties, such duties are imposed according to any specific value, quantity or number, the same shall apply in the like proportion to any greater or less value, quantity or number. How duties to
be paid, &c.
6. The duties shall be paid to the collectors of the colonial revenue, and received at the office of the receiver general either in treasury notes or in current coin at the legal rate of tender. In what cur-
rency.
7. Duties paid into the receiver general's office shall be carried to account of the provincial revenue, and become part of the public funds, and shall be paid and applied only to such purposes as may be expressed from time to time in the provincial statutes concerning the same, and shall in all cases be drawn only by warrant under the hand and seal of the governor. To become part
of the public
funds.
8. The governor in council may, whenever it shall be advisable so to do, declare by proclamation what articles, the growth and production of the British North American provinces of Canada, New Brunswick, Prince Edward Island, and Newfoundland, or any of them, may be imported into the province free of duty, and may declare in what manner and under what restrictions the same may be so imported. Governor may
declare articles
the produce of
British North
American colo-
nies free.
9. Nothing herein contained shall operate to impose duties on articles exempted from duty under the act for giving effect on the part of the province of Nova Scotia to a certain treaty between her majesty and the United States of America, passed in the year 1854. Articles ex-
empted under
treaty with U.S.
not affected.
10. Books, drawings, paintings, or prints of an immoral or indecent character, are prohibited to be imported into this province, under a penalty of fifty dollars for each offence, and the forfeiture of the parcel or package of goods in which such prohibited articles may be found. Books, &c. of
immoral cha-
racter prohibi-
ted.
Penalty.

CHAP. 8.

TABLE OF DUTIES.

Apples, fresh or dried, per barrel,	\$1 00
Ale, beer and porter, in wood or bottles, per gallon,	0 06
Bacon, per cental or 100 lbs.,	2 00
Beef, salted, per barrel,	1 00
“ fresh, per 100 lbs.,	1 00
Biscuit, fine, and bread, including crackers or cake,	
100 lbs,	1 00
Butter, per 100 lbs.,	1 75
Burning fluid, per gallon,	0 10
Candles, tallow, per lb.,	0 03
All other candles, per lb.,	0 08
Cassia and cinnamon, ground, per lb.,	0 05
Cattle, viz., horses, mares, or geldings, each,	10 00
Neat cattle, viz., oxen, or other neat cattle,	
3 years old or upwards, each,	7 50
Cows and cattle under 3 years old, each,	2 50
Sheep, each,	0 75
Cattle—hogs, alive, over 100 lbs. weight, each,	5 00
of 100 lbs. weight and under, each	0 50
Cheese, per 100 lbs.,	1 00
Chocolate, or cocoa paste, per lb.,	0 03
Coffee, green, per lb.,	0 04
roasted, burned or ground, per lb.,	0 05
Flour (wheat) per bbl.,	0 25
Ginger, ground, per lb.,	0 04
Geneva and whiskey, not exceeding the strength of proof by Sykes' hydrometer, and so in propor- tion for any greater strength than the strength of proof, per gallon,	0 70
Hams, smoked or dried, per 100 lbs.	2 00
Lard, per 100 lbs.,	1 75
Leather, viz., sole leather, including hides and skins partially dressed therefor, per lb.,	0 04
Molasses, per gallon,	0 05
Onions, per 100 lbs.,	0 50
Oil, viz., rock or coal oil, per gallon,	0 10
Paraffine, per gallon,	0 07
Pears, fresh or dried, per barrel,	1 00
Pork, salted, per barrel,	1 00
fresh, per 100 lbs.,	1 00
Pepper and Pimento, ground, per lb.,	0 04
Raisins, per lb.,	0 02
Rum, not exceeding the strength of proof by Sykes' hydrometer, and so in proportion for any greater strength of proof, per gallon,	0 40
Spirits, viz., brandy, cordials, and other spirits, ex- cept rum, geneva, and whiskey, not exceeding the strength of proof by Sykes' hydrometer, and so in proportion for any greater strength of proof, per gallon,	0 90

Spirits, or strong waters, not otherwise enumerated, not being pure alcohol, mixed with any ingredients, and although thereby coming under the head of some other denomination, with the exception of varnish (in any package), shall be deemed spirits or strong waters, and shall pay a duty per gallon of		CHAP. 8.
Sugar, brown or muscovado, not refined, per 100 lbs.,	\$0 50	
Candied, brown, crushed, and bastard facings, and refined, per 100 lbs.,	1 50	
Teas, souchong, congou, pekoe, bohea, pouchong, and all other black teas, per lb.,	2 00	
Gunpowder, hyson, young hyson, twankay, and other green teas, per lb.,	0 06	
Tobacco, manufactured, except snuff and cigars, per lb.	0 11	
Tongues of cattle, dried or pickled, per 100 lbs.,	0 05	
Wines, viz., hock, constantia, malmsey, catawba, tokay, burgundy, hermitage, moselle, and champagne, per dozen of five bottles to the gallon,	2 00	
On all other wines in bottles, per dozen of five bottles to the gallon,	2 50	
Port, sherry, and madeira, in wood, per gall.,	1 50	
On other wines in wood, costing twenty-four pounds sterling and upwards per pipe at the port from whence last imported, per gallon,	0 60	
Other wines in wood, costing less than twenty-four pounds sterling per pipe at the port from whence last imported, per gallon,	0 60	
Clocks, and all wheels, machinery and materials used in their manufacture,	20 00	
Confectionery, syrups, and articles manufactured from sugar,		
Cigars and snuff,		
Patent medicines,		
For every \$100 of the value,	10 00	
Currants and figs,		
Leather, viz., boots, shoes, and leather manufactures of all kinds,		
Upper leather of all sorts, including hides and skins partially dressed therefor,		
Meat, fresh, except beef or pork,	5 00	
Poultry of all sorts, dead,		
For every \$100 of the value,		
Anchors, grapnels, and anchor palms,		
Cables of hemp or other vegetable substance, or of iron or iron wire,	5 00	
Cotton yarn,		
Cordage, tarred or untarred, whether fitted for rigging or otherwise,		
For every \$100 of the value,		

CHAP. 8.	Iron, viz., in bars or bolts, pipes or tubes, sheet iron, iron spikes, hoop iron, iron rigging, iron chains, clench rings, boiler plates, and iron knees for ships,	\$5 00
	Machinery of all kinds, for mills, steamboats, and manufactories,	
	Oakum,	
	Pitch,	
	Sail cloth of all kinds, canvas, sail twine, ready made sails and grummets,	
	Tar,	10 00
	For every \$100 of the value,	
	All other goods, wares, and merchandize, not otherwise charged with duty, and not enumerated in the table of exemptions,	
	For every \$100 of the value,	

TABLE OF EXEMPTIONS.

Ashes, viz., pot ashes and pearl ashes.
 Asses and mules.
 Baggage and apparel of passengers, in use and not intended for sale.
 Barilla and soda ash.
 Beans.
 Bells, organs, or musical instruments for churches.
 Biscuit, or bread, viz., ship or navy.
 Books and pamphlets not prohibited to be imported into the United Kingdom.
 Bristles and hairs used in the manufacture of brushes.
 Bullion, gold or silver.
 Burr stones.
 Coal.
 Cocoa.
 Coin.
 Copper, viz., in pigs or bricks, old or worn, or fit only to be remanufactured.
 Copper: Yellow metal, composition and zinc, for ship sheathing, of a size forty-eight inches long by fourteen inches wide, and sheathing felt; and copper, composition and zinc bars or bolts, nails, spikes, and clench rings used for ship building.
 Corkwood.
 Corn, viz., wheat, rye, indian corn, barley, oats, rice, and buckwheat, unground; barley meal, rye meal, indian meal, rice meal, oat meal, buckwheat meal, peas and beans.
 Cutch.
 Engravings and photographs.
 Fish, viz., fresh, dried, salted or pickled.
 Fish hooks.

Fish oil, viz., train oil, spermaceti oil, headmatter and blubber, fins or skins, the produce of fish or creatures living in the sea. CHAP. 8.

Flax.

Furniture that has been in actual use, working tools and implements, the property of immigrants, or persons coming to reside in the province, and not intended for sale, not to include machinery, musical instruments and plate.

Hay.

Hemp.

Hides, or pieces of hides, raw, not tanned, curried or dressed.

Horns.

Hops.

Horses and carriages of travellers, and horses, cattle, carriages and other vehicles, when employed in carrying merchandize, together with the necessary harness and tackle, so long as the same are actually in use for that purpose.

Iron, viz., unwrought or pig iron, iron rails for railroads, scrap iron, and old iron fit only to be remanufactured.

Lime and limestone.

Lines for the fisheries, of all kinds.

Malt. *Marine Steam Engines also exempt see act of 1865 Chap. 22*

Manures of all kinds.

Maps and charts.

Nets, fishing nets, and seines of all kinds.

Ores of all kinds.

Paintings.

Palm oil.

Pig lead, and old lead fit only to be remanufactured.

Plants, shrubs and trees,

Plate, of gold and silver, old, and only fit to be remanufactured.

Potatoes.

Printing paper, not less than demy size.

Printing presses and types, and printer's ink.

Rags, viz., old rags, old rope, junk, old fishing nets, and old canvas.

Rosin.

Sails, rigging, and ship materials, saved from vessels wrecked on the coast of this province, and saved from vessels owned and registered in the province, if wrecked on the coast of this province or elsewhere.

Salt.

Saltpetre, crude, for manufacturing purposes.

Sands of all kind.

Seeds of all kinds for agricultural purposes.

Sheathing paper for ships.

Skins, furs, pelts or tails undressed.

- CHAP. 8. Stones unmanufactured, including slates.
 Straw.
 Statuary.
 Sugar of the maple.
 Tallow.
 Twines used in the fisheries.
 Tobacco unmanufactured.
 Tow.
 Turpentine, raw.
 Whale fin or bone.
 Wood, viz., boards, planks, staves, square timber, shingles and firewood, but not to include woods used for dyeing.
 Zinc, viz., zinc sheathing of a size forty-eight inches long by fourteen inches wide, intended for and to be used as sheathing for vessels, and zinc sheathing nails.

Part the Second.

OF A CERTAIN TREATY BETWEEN HER MAJESTY AND THE UNITED STATES OF AMERICA.

Preamble.

Whereas it is expedient to provide for giving effect, as regards this province, to the treaty between her majesty and the United States of America, signed on the fifth day of June, in the year of our Lord one thousand eight hundred and fifty-four:

Power of governor to suspend, &c.

1. The articles enumerated in the schedule to this chapter, being the growth and produce of the United States of America, shall be admitted into this province free of duty, so long as the treaty shall remain in force, any law, act, or statute, to the contrary notwithstanding, except that if at any time the United States shall, under the terms of the treaty, suspend the operation of the third article thereof, so far as this province is affected thereby, then the governor of this province may, if he see fit, declare such suspension by proclamation, after which the exemption from duty under this chapter shall cease while such suspension shall continue; but the governor may again, whenever such suspension shall cease, declare the same by proclamation, from and after which, such exemption shall again take effect.

Further proceedings may be taken.

2. It shall be lawful for the governor in council, by any order or orders to be made for that purpose, to do any thing further in accordance with the spirit and intention of the treaty, which shall be found necessary to be done, on the part of this province, to give full effect to the

treaty; and any such order shall have the same effect as if the object thereof was expressly provided for by this chapter. CHAP. 8.

3. The first eighteen sections of the chapter of this series, "of the coast and deep sea fisheries," together with such provisions of all other laws, acts or statutes of this province now in force, as are contrary to, or inconsistent with, the terms and spirit of the treaty, are hereby declared to be suspended as regards citizens and inhabitants of the United States of America, and vessels, boats and crafts belonging to the citizens and inhabitants of that country, and shall continue to be so suspended, and not in force so long as the treaty shall continue and be in force; any law, act or statute, to the contrary notwithstanding.

Sec. 1 to 18 of chap. 94 suspended while treaty in force.

SCHEDULE TO THIS ACT.

Grain, flour, and breadstuffs of all kinds.
 Animals of all kinds.
 Fresh, smoked, and salted meats.
 Cotton wool, seeds and vegetables.
 Undried fruits, dried fruits.
 Fish of all kinds.
 Products of fish and all other creatures living in the water.
 Poultry, eggs.
 Hides, furs, skins, or tails undressed.
 Stone or marble in its crude or unwrought state.
 Slate.
 Butter, cheese, tallow.
 Lard, horns, manures,
 Ores of metals of all kinds.
 Coal.
 Pitch, tar, turpentine, ashes.
 Timber and lumber of all kinds, round, hewed and sawed, unmanufactured in whole or in part.
 Firewood, plants, shrubs and trees.
 Pelts, wool.
 Fish oil.
 Rice, broom corn, and bark.
 Gypsum, ground or unground.
 Hewn, wrought, or unwrought burr or grindstones.
 Dye stuffs.
 Flax, hemp, and tow unmanufactured.
 Unmanufactured tobacco.
 Rags.

CHAP. 9.

Enacted 1865 Chap 23.

CHAPTER 9.

OF EXCISE DUTIES.

Duty on ale and
porter.

1. All ale, porter, and other malt liquors, brewed or manufactured in this province, shall pay a duty of two cents per gallon.

On tobacco, ci-
gars, and snuff.

2. All tobacco leaf manufactured into tobacco, cigars, or snuff, within this province, shall pay a duty of one cent per pound.

Licenses—how
granted, &c.

3. Licenses for the brewing and manufacturing of ale, porter, and other malt liquors, and for the manufacture of tobacco, shall be granted by the governor in council, and shall be as in form A. and signed by the president of the board of revenue or his principal clerk, and every such license shall expire on the first day of April in each year. Before any such license shall be granted, the party applying for the same shall enter into a bond with two good sureties as in schedule B.

Bond.

Penalty for
manufacturing
without license.

4. Any person by himself, his servants and agents, engaged in manufacturing or brewing ale, porter, or other malt liquors, or manufacturing tobacco, intended for sale, without a license first had and obtained, shall forfeit and pay a sum of four hundred dollars to be recovered in the name of her majesty the queen; and each day he shall be so engaged shall be considered a separate offence and subject him to a further and like penalty.

Machinery,
stock, &c., to be
forfeited.

5. In addition to any penalty so incurred, the tubs, vats, utensils, and stock, about to be used for malting, with all ale, porter, and other malt liquor manufactured or brewed; and the machinery and stock about to be used in manufacturing tobacco, and all tobacco manufactured, found upon the premises of any person or persons who shall not have taken out a license as above provided, and who shall be discovered illicitly preparing or manufacturing any of the above named articles upon which duty is hereby imposed, may be seized and confiscated as provided in case of the illicit importation, or possession of contraband or smuggled goods.

Returns, when
made, &c.

6. Four times each year, viz., in the first week of July, October, January, and April, every person having obtained a license for manufacturing or preparing any of the articles above named, shall file in the office of the board of revenue a return upon oath as in schedule C. of all the articles and goods and the quantities manufactured or prepared and liable to duty under this chapter, for the three months next preceding the first day of the month in which such return shall be made, in accordance with the condition of his bond, and shall thereupon pay over to the receiver

general the amount of duty payable upon the articles so prepared or manufactured and returned, or enter and warehouse the same, or the portion upon which the duties remain unpaid, and in case of exportation he shall be entitled to a drawback where the duties have been paid, and the value of the goods so exported at any one time shall amount to forty dollars. In case of neglecting to make such return, or in case of false return being made, or in case of duties remaining unpaid which are due, the bond so given shall be forfeited.

CHAP. 9.

Drawback.

7. Revenue officers are hereby authorized to enter into and upon any premises or places where there shall be reasonable grounds of suspicion that persons are engaged or about to engage in the illicit manufacturing or preparing of any of the articles above mentioned, in the same way as provided in section two of the chapter "of the prevention of smuggling," and may also take an account of stock; and they may also enter any building or the premises of any person holding a license under this chapter, and take an account of stock as provided by section four of the same chapter; and the remaining provisions of such chapter for the seizure, condemnation, and confiscation of goods, and for the protection of revenue officers, are hereby made applicable to this act.

Power and duties of revenue officers.

8. The board of revenue are hereby authorised to make any and all regulations which may be considered necessary for carrying out the objects of this chapter, and collecting the duties imposed thereby, and shall annex penalties for the breach thereof as may be found requisite; and all penalties recovered under this chapter may be appropriated as the board shall order.

Regulations, &c., how made

Application of penalties.

9. Any false return made hereunder, shall, in addition to any penalty herein provided, render the offender liable for perjury, and subject to the punishment therefor.

Making false return perjury.

10. This chapter shall continue in force until the first day of April, in the year one thousand eight hundred and sixty-five.

Duration of act.

SCHEDULE.

(A.)

County of ———

License is hereby granted to A. B. of ——— in the county of ———, to brew and manufacture ale, porter, and other malt liquors, or to manufacture tobacco, [as the case may be] conformably to law, on his premises, situate, [here describe particularly the premises,] until the first day of April, 186

Dated this ——— day of ——— A. D. 186

CHAP. 9.

(B.)

Bond, common form, with two sureties, made payable to her majesty the queen for two thousand dollars.

The condition of the above bond is as follows:

Whereas a license has this day been obtained for [*as the case may be.*] Now if the said A. B. shall make a true and correct return of all, [*as the case may be*] pay the duties by law imposed, and in all other respects comply with the provisions of the chapter of the revised statutes, third series, "of excise duties," then this bond shall be void, otherwise to be and remain in full force, virtue and effect.

Signed, sealed, and delivered,	}	A. B. (seal.)
In presence of		C. D. (seal.)
		E. F. (seal.)

(C.)

A return of all ale, porter, and other malt liquors brewed or manufactured; of all tobacco manufactured, [*as the case may be*] by the undersigned, or for or on his account or benefit, within this province, between the — day of —, 186—, and — day of — 186—, made in conformity with, and under and by virtue of the chapter of the revised statutes, third series, "of excise duties."

County of — ss.

I, A. B., do solemnly swear that the above and foregoing is a just, true, and full account and return of the entire number of gallons of —, number of pounds of tobacco, [*as the case may be*] brewed and manufactured, or manufactured, [*as the case may be*] during the time above set forth, and that the foregoing return is made in conformity with the requisitions of the chapter above referred to, and that the same is correct and true. So help me God.

Sworn to at — this —	}	A. B.
day of —, A. D. 186—, before me		

If there be a co-partnership firm, then the license, bond, return, and affidavit, to be adapted to the case, and the affidavit to be sworn to by one of the members of the firm.

CHAPTER 10.

OF THE BOARD OF REVENUE.

1. The receiver general shall be president of and together with the financial secretary and three other persons to be appointed by the governor in council, shall constitute the board of revenue, the seats at such board to be considered honorary appointments, and the members to be sworn into office.

Board of Revenue how composed.

2. The board shall superintend the working and practical effects of the revenue system, and report thereon to the governor when requisite. They shall examine claims for drawbacks and grant certificates therefor when allowed, and shall direct and carry on prosecutions against delinquent officers and their sureties, and also prosecutions for seizures, forfeitures, and breaches of the revenue laws, over which they shall have a general control, and they may remit penalties in whole or in part, and direct the restoration of property seized under such terms as they may deem just.

Their power and duties.

CHAPTER 11.

OF THE APPOINTMENT AND DUTIES OF OFFICERS OF THE CUSTOMS.

1. The governor in council may define and alter the limits of ports, and appoint for every such port one collector of colonial duties, who may also be empowered to act as landing waiter, guager, and weigher, and may appoint so many additional officers in any port or place within this province as shall from time to time be deemed necessary for the due security of the colonial revenue, and for the prevention of frauds thereto; and such officers shall be paid by warrant on the treasury at such rates as shall be fixed by the governor in council, subject to the revision of the legislature at the first ensuing session.

Appointment of collectors.

Appointment and remuneration of additional officers.

2. Every collector, except the collector at Halifax, shall, upon appointment, enter into a bond with two sureties in four thousand dollars for the faithful performance of his duties; the bonds shall be registered at length on the oath of a subscribing witness, in a book to be kept for that purpose by the provincial secretary, and if a

Bonds given and registered.

CHAP. 11. bond be lost, a copy thereof, taken from the registry and certified by the provincial secretary, shall be received in evidence.

Death or insolvency of sureties. 3. If either of the sureties shall die, become insolvent, or remove from the province, the board of revenue shall require the collector for whom he was surety to give a new bond.

Sets of books to be kept. 4. Collectors shall keep regular sets of books, wherein shall be entered all receipts and payments of money, permits for the removal of dutiable goods, and certificates of drawback, which shall be regularly balanced and produced for inspection, with all entries and documents in their office, when called for by the financial secretary, the receiver general, or any person by them authorized, or the committee of public accounts.

Quarterly returns when made. 5. Collectors shall, as soon as may be practicable, after the termination of every quarter, transmit under oath their quarterly accounts, together with a list of permits given for the removal of dutiable goods, to the receiver general, and at the same time pay into the treasury the duties for such quarter.

Per centage allowed. 6. Upon their accounts being audited by the financial secretary, collectors shall be entitled to receive from the treasury a commission of ten per cent. on the duties by them paid in, not exceeding one thousand dollars in any one year.

Penalty for acting as merchant, &c. 7. If a collector shall act as a merchant, commission merchant, auctioneer, or dealer in dutiable articles, he shall for every offence forfeit two hundred dollars—one half to the use of the government, and the other half to the person suing therefor—and no commission shall be allowed such collector on the duties by him collected for the year in which the offence shall have been committed.

Proceedings on resignation or removal. 8. If a collector shall resign or be removed from office he shall forthwith deliver over to the new collector all securities, books and papers, connected with the office, which may be in his hands, and shall immediately make up and return his accounts, and pay over to the receiver general all monies in his hands or due to him as collector. If he shall not render such accounts, and pay over such monies within three months from his going out of office, he shall forfeit eight hundred dollars for the use of her majesty.

Appointment of landing waiters, guagers, &c. 9. The governor in council may appoint landing waiters, guagers, and weighers, for the different ports, who shall receive for their services, in addition to any fees by law allowed, such sums as may be annually granted by the legislature.

Duty of guagers and their fees. 10. Guagers are required to ascertain, if possible, by Gunter's calipers, or if not by the rod, the quantities of intoxicating liquor and molasses imported into the pro-

vince, and shall mark with an iron the quantity each cask contains, on the stave next the bung stave, or on the head of every cask, together with the initials of his name, and shall be entitled to receive therefor from the importers or owners the following fees, viz. :—for a puncheon or pipe, ten cents; for a hogshhead or tierce, six and two-thirds cents; and for a barrel, three and one third cents; and for other casks in the like proportion; and in addition to such fees, except at the port of Halifax, ten cents for every mile they shall necessarily travel, computing the distance from the custom house to the place of guaging. Where more than ten casks shall be guaged at one time and place, they shall only be entitled to the following fees :—for a puncheon or pipe, five cents; for a tierce or hogshhead, three and one-third cents; and for a barrel, one and two-third cents, besides travelling fees.

CHAP. 11.

11. The collector at Halifax shall give bond in four thousand dollars with two sureties in two thousand dollars each, for the faithful discharge of his duties, and shall receive a salary of one thousand six hundred dollars.

Bond of Halifax Collector.

Salary.

12. Such collector shall be appointed by the governor in council, and shall pay into the hands of the receiver general the whole duties which he shall receive on the day of receipt, or at such other time as the receiver general may direct.

Appointment and duty of Halifax Collector.

13. The collectors of colonial duties may administer oaths, under any chapter, relating to the colonial revenue.

Power of administering oaths.

14. If any officer of the colonial revenue shall neglect his duty he shall forfeit a sum not exceeding two hundred dollars, and also the costs of the prosecution.

Penalty for neglect of duty.

15. If any person shall illegally assume the duties or exercise the functions of any officer of the colonial revenue, he shall, for every offence, forfeit a sum not exceeding two hundred dollars and costs of prosecution, and in case of non-payment thereof may be committed to jail for a period not exceeding three months.

Penalty for illegally assuming office.

CHAPTER 12.

OF THE LAWS OF THE CUSTOMS.

1. Papers and proceedings connected with the entry and clearance of vessels and goods shall be made and had in form and manner as heretofore, unless otherwise directed by the board of revenue, but any of them may be dispensed with by order of the governor in council.

Entry & clearance how made.

CHAP. 12.

Bonds by whom
and how taken

2. Bonds relating to duties required to be given in respect of goods or vessels, shall be taken by the collector in her majesty's name, and after the expiration of three years from the date thereof, or from the time, if any, therein limited for the performance of the condition, every bond not then in suit shall become void and be cancelled.

Samples for as-
certaining du-
ties.

3. Revenue officers may take samples of goods when necessary for ascertaining the duties, and the samples shall be disposed of and accounted for as the board may direct.

Questions of
dates how regu-
lated.

4. Upon the first levying or repealing of any duty, or the first granting or repealing of any drawback, or the first permitting or prohibiting of any importation or exportation, the time of importation of goods shall be deemed to be the time at which the importing ship shall in due course be reported; and the time of exportation the time when the goods shall be shipped on board the exporting ship. If any question shall arise in respect of any charge or allowance upon any ship exclusive of the cargo, the time of arrival shall be deemed to be the time at which she ought to have been reported, and the time of departure the time of her last clearance for the voyage.

By what law
duties shall be
computed and
penalties re-
covered.

5. Duties on goods imported before the coming into operation of an act imposing new duties, and whereon the duties have not been paid, shall be collected under the new law, but forfeitures shall be recovered under the law under which they were incurred, notwithstanding such law may have expired.

Limitation for
recovering
over-paid du-
ties.
Penalties for
counterfeiting
documents.

6. Duties overpaid or improperly charged shall not be recoverable after three years from time of payment.

7. If any person shall counterfeit or falsify, or knowingly use or procure to be used when counterfeited or falsified, any document required under the revenue laws, or in use in connection therewith, he shall for every offence forfeit a sum not exceeding eight hundred dollars. This penalty shall not attach to any particular offence for which a penalty is otherwise imposed.

Agent's autho-
rity.

8. Officers may require persons applying to transact business for others, to produce a written authority, and in default may refuse to transact business with them.

Penalties for
false declara-
tions.

9. If any declaration or oath required to be made under the revenue laws, shall be untrue in any particular, or if any person required under such laws to answer questions put to him by officers shall not truly answer such questions, the person making such declaration, or refusing to answer or not truly answering such questions, shall forfeit a sum not exceeding two hundred dollars over and above all other penalties to which he may be liable.

Forfeitures and
penalties for re-
moving forfeit-
ed goods.

10. All ships, boats, carriages and cattle used in the importation or removal of any goods liable to forfeiture, shall be forfeited; and every person who shall knowingly

assist in such removal, or harbor such goods, or knowingly have them in possession, shall forfeit treble the value thereof, or a sum not exceeding four hundred dollars, at the election of the prosecutor, and the averment of such election in the information or libel shall be sufficient proof thereof. The forfeiture of a ship shall include her guns, boats, tackle, apparel and furniture; and of goods, the package containing them. CHAP. 12.

11. All vessels and boats in or from which goods shall have been illegally imported, concealed, landed, or thrown over, may be seized in the first instance, and shall be liable to forfeiture; and such boats and vessels may also, upon judgment against the master or other person on board for any penalty thereby incurred, be levied upon and sold under execution issuing on such judgment; but the board on proof that the master and owners of the vessel were ignorant of such illegality, may relieve from the penalty in whole or in part, and on such terms as may be deemed right.

Vessels & boat forfeited may be relieved by board of revenue.

12. All goods and all vessels, boats, carriages, and cattle, liable to forfeiture, may be seized by any revenue officer or by any person employed for that purpose with the concurrence of the board, and also by any officer of her majesty's navy in command of or serving under the commander of any of her majesty's ships, also by any person commissioned by the governor to protect the revenue, and by any sheriff or deputy sheriff, or by any justice of the peace, or by any other person in a place more than ten miles from any collector who shall by the warrant of a justice of the peace on oath before him of such forfeiture, be appointed to seize them; and every person who shall obstruct any such person so employed in the exercise of his office, or any person acting in his aid, shall forfeit a sum not exceeding four hundred dollars.

Seizing officers, fine for obstructing.

13. If any goods or any vessel shall be seized as forfeited under the revenue laws, the court having jurisdiction over such seizure, with the consent of the collector may order the delivery thereof to the claimant on security by bond with two sureties approved by the collector, being given to answer double the value thereof in case of condemnation; and such bond shall be taken in her majesty's name.

Goods seized may be restored on security

14. If any goods, ship, or boat, shall be seized as forfeited, or detained as undervalued, the board may order the same to be restored on such terms as they shall direct; and if the proprietor accept the terms he shall have no action on account of the seizure or detention, nor shall any proceedings be had for condemnation.

Goods seized may be restored by board of revenue.

15. If a ship shall have become liable to forfeiture on account of any goods laden therein or unladen therefrom, or the master shall have become liable to a penalty on

Power of board in cases of tripping amount.

CHAP. 12. account of such goods, and the goods be small in quantity or trifling in value, the board, if satisfied that the act was done contrary to the intention of the owner, or without the privity of the master as the case may be, may remit the forfeiture and remit or mitigate the penalty on the master in their discretion, and no action shall be thereafter brought in respect of the same.

Officer may be stationed on board of ship.

16. The board or collector or landing waiter, or other proper officer, may station officers on board any ship while within the limits of a port, and the master shall provide every officer sufficient room under-deck in the fore-castle or steerage for his bed or hammock under a penalty of two hundred dollars.

Persons on board a vessel subject to penalties in certain cases.

17. Every person proved to have been on board any vessel or boat liable to forfeiture for having been found within one league of the province, having on board or attached thereto, or conveying or having conveyed any thing subjecting such vessel or boat to forfeiture, or who shall be proved to have been on board any vessel or boat from which any part of the cargo shall have been thrown overboard or destroyed, shall forfeit eighty dollars, provided such person shall have been knowingly concerned in such acts.

Limitation of actions.

18. No suit for recovery of penalties or forfeitures under the revenue laws shall be brought after the expiration of three years from the incurring thereof.

Penalties how recovered.

19. Penalties imposed by and forfeitures under any chapter under title III of the public revenue, except in cases specially provided for, shall be recoverable by and in the name of the attorney general or solicitor general or of some collector or other officer of colonial duties under order of the board of revenue, as a debt by summons in which it shall only be necessary to state the penalty claimed or forfeiture incurred and the chapter and section under which it is alleged to have been incurred. And the plaintiff shall be entitled with or after the summons to a *capias* endorsed for the amount of the penalty claimed on an affidavit being made of the cause of prosecution. All penalties and forfeitures under said title III, whether recovered by action or otherwise, shall, after deducting the costs and expenses incurred, be paid to the board of revenue for the use of the province; and the board may appropriate such portions as they may think proper to the officer concerned in making the complaint or prosecuting the action or otherwise instrumental in the recovery. If any question in an action under the said title shall arise whether any person is an officer of the revenue, oral evidence shall be sufficient.

Distribution of penalties.

Averments of place in information sufficient.

20. In any information or proceeding for any offence against the revenue laws, the averment that the offence was committed within the limits of any port shall be sufficient presumptive proof of the fact.

21. If goods shall be seized as forfeited, and any dispute shall arise whether the duties have been paid thereon, or the same have been legally imported, laden, or exported, the proof shall be on the owner or claimant. CHAP. 12.
Proof in cases of seizure.

22. No claim to anything seized under the revenue laws and returned into a court of record for adjudication, shall be admitted, unless entered in the name of the owner, with his residence and occupation, nor unless oath to the property therein be made by the owner, or by his attorney or agent, entering the claim to the best of his knowledge and belief; nor shall any such claim be admitted until security shall have been given in the court, in a penalty not exceeding one hundred sixty dollars, to respond the costs occasioned by such claim, if decided against the claimant, and in default of the provisions of this section being complied with such thing shall be condemned. Claim to goods seized how made.

23. Certificates and copies of official papers, certified under the hand and seal of any of the principal officers of the customs, or of any collector of colonial revenues in any of the British possessions in America or the West Indies, or of the principal officers of the customs of the united kingdom, or other the British possessions, or of any British consul or vice consul in a foreign country, and certificates and copies of official papers made pursuant to the revenue laws of this province, shall be received as presumptive evidence on the trial of any suit in reference to any matter contained in the revenue laws. Certificates received in evidence.

24. No action shall be commenced against any person acting under the revenue laws for any thing done in the exercise of his office until one month after written notice shall have been delivered to him or left at his usual place of abode; in which notice shall be explicitly stated the cause of action, the names and places of abode of the person intending to bring the same, and of his attorney or agent, and no evidence of any cause of action shall be received which was not contained in the notice. In default of the proof of such notice, a verdict shall be given for the defendant. Every such action shall be brought within three months after the cause thereof, and be laid and tried where the acts were committed. Month's notice before action.

25. If any revenue officer or person employed for the prevention of smuggling shall make a collusive seizure, or deliver up, or agree to deliver up or not seize any thing liable to forfeiture under the revenue laws, or shall take any reward for the non-performance of his duty, he shall forfeit for every offence a sum not exceeding eight hundred dollars, and be incapable of serving her majesty in any office of provincial appointment; and every person who shall give or offer, or promise to give, or procure to be given, any reward to, or shall make any collusive agreement with any officer or person hereinbefore in this section Collusion how punished.

CHAP. 13. designated, to induce him to neglect his duty, shall forfeit a sum not exceeding four hundred dollars.

Appeals when and how to be prosecuted.

26. No appeal shall be prosecuted from a judgment of a court of record touching any penalty under the revenue laws, unless entered, and security therefor filed within six months from the time of judgment.

Appeal not to stay execution in certain cases.

27. Where proceedings have been instituted against any vessel, boat, or goods, for recovery of any penalty under the revenue laws, and judgment of restitution is given, the execution thereof shall not be suspended by an appeal, if the party appellee shall give security that, if the judgment shall be reversed, and the vessel, boat, or goods condemned, the full value thereof, to be ascertained by agreement between the parties, or in case of difference, then by appraisement, under the authority of the court, shall be rendered.

Operation of regulations may be suspended.

28. Upon the representation of the board, the governor in council may suspend the operation of any regulation in this chapter contained, for so long a time as may be deemed proper.

Rules for construing revenue laws.

29. In the construction of the revenue laws the following rules shall be observed, unless otherwise expressly provided for, or such construction would be inconsistent with the manifest intent of the legislature, or repugnant to the context, that is to say; the word "ship" or "vessel" shall include vessels of all classes; "boats" shall include all sorts of water conveyances under the class of vessels; "master" shall mean the person having charge of the vessel; "mate" shall mean the person next in command to the master; "seamen" shall mean any of the crew; "board" shall mean the board of revenue; "collector" shall mean the collector of colonial revenue for the port; "officer" shall mean revenue officer; "proper officer" shall mean the person authorized to do the act referred to; "proprietor," "owner," "importer," and "exporter," shall include persons acting in their behalf.

CHAPTER 13.

OF THE IMPORTATION OF GOODS.

Provisions of chapter; their extent.

1. All goods liable to duties, imported into this province or carried from one part of the province to another, shall be subject to the provisions of this chapter.

No goods unladen, &c., within 3 leagues of coast before report, &c.

2. No goods shall be unladen from any vessel bringing goods into the province, nor from any vessel having on board dutiable articles brought coastwise, nor shall bulk

be broken after the arrival of any such vessel within three leagues of the coast, before report and entry and permit granted, and except in conformity with the directions in this chapter contained; and all goods unladen contrary hereto shall be forfeited; and if bulk be broken contrary hereto the master shall forfeit two hundred dollars. If after the arrival of any such vessel within three leagues of the coast any alteration be made in the stowage of the cargo so as to facilitate the unlawful unlading of any part thereof, or if any part thereof be fraudulently staved, destroyed, or thrown overboard, or any package be opened, it shall be deemed a breaking of bulk; all goods to be reported, but fresh fish, coin and bullion may be landed without entry or permit, as well as goods in any stranded or wrecked vessel; provided that as soon as such goods are safely deposited on shore, report and entry be made thereof; and provided also that such landing shall be in presence of an officer where such officer can be procured.

CHAP. 13.

3. The master of every vessel engaged in carrying goods coastwise, shall obtain from the nearest collector a clearance setting forth whether the vessel be laden or in ballast, and if laden whether the goods be the produce of this province, and if the goods are such as are liable to duties, if the duties thereon have been paid; which clearance the master shall hand to the collector at the next port immediately on his arrival.

Clearance of vessels carrying goods coastwise.

4. If the master shall neglect to obtain such clearance or to deliver up the same as before specified, he shall be subject to a penalty of two dollars, and the collector may detain the vessel until the penalty be paid; provided that the collector may dispense with the production of a clearance in all cases where the cargo has been laden at a port where there is no collector or other officer of the revenue, or where the residence of such officer shall be distant more than two miles from the place of shipment; and in other cases where the collector shall be satisfied that the master has not been guilty of wilful neglect; and may allow the master to substitute a written manifest in lieu of a clearance.

Penalty for neglecting to obtain clearance.

5. The master of every vessel arriving coastwise with dutiable articles on board, and the master of every vessel arriving from parts beyond the seas, shall at once make a written report at the principal revenue office, of the arrival and voyage of the vessel, her name, country, and tonnage, and if British, the port of registry, of the name and country of the master and the number of the crew, whether the vessel is laden or in ballast, and if laden, the marks, numbers and contents of every package, and the particulars of the goods stowed loose; where the goods were laden, and where and to whom consigned, and where any were laden during the voyage, if any such there be, so far

Report to be made by master of vessel arriving coastwise.

CHAP. 13. as such particulars are known to him; where the vessel has broken bulk, if at all, during the voyage; what part of the cargo is intended for importation at that port, and what part at any other port in the province, and what is intended for exportation, and what surplus stores remain on board; and he shall at the same time, if required by the officers, produce the bills of lading of the cargo or true copies, and he shall further truly answer all questions connected with the foregoing requirements that shall be put to him by the officer, and take and subscribe the following oath, to be administered by the collector or other person acting in his behalf if absent:

Form of oath.

I, ——— master of the ship or vessel called the ——— of ——— tons measurement or thereabouts, last cleared from the port of ———, do solemnly swear that since the said vessel was so cleared, I have not broken bulk, nor has any part of her cargo been discharged or landed, or moved from the said vessel; and I do further swear that the manifest now exhibited by me and hereto annexed doth to the best of my knowledge and belief, contain a full, true, and correct account of all the goods, wares, and merchandize laden on board such vessel at the said port of ———, or at any other port or place during her present voyage. So help me God.

Sworn to at ——— this ——— day }
of ——— 186—, before me, }
———— collector of excise. } ——— master.

Penalties on master.

6. If the master shall not in all respects comply with the provisions of this section, or if the manifest or bill of lading, or copy thereof, be false, or if the goods contained in any bill of lading shall not have been *bona fide* shipped, or if any bill of lading shall not have been signed by him or under his authority, or any such copy thereof shall not have been received or made by him, in either case before leaving the place of shipment, or if any goods be unladen before report made, the master shall for every offence forfeit two hundred dollars, and the goods landed without report shall be forfeited, and the ship shall be liable to be seized, and shall not be released until the penalty imposed on the master and the costs of seizure and detention are paid, unless otherwise ordered by the board.

Board may require written reports in detail

7. It shall be competent for the board of revenue to require all masters of vessels to make written reports or manifests more in detail than heretofore, and in such forms as the board may from time to time approve.

Master to forfeit \$200.

8. Duitable goods found on board a vessel and not reported on entry by the master shall be forfeited, but the board shall remit such forfeiture whenever they are satisfied that no fraud has been practised by the owners of the goods, and upon such terms as the board shall approve; and the master by whom such defective report has been made shall forfeit two hundred dollars.

9. If the contents of any package intended for importation into another port, or for exportation, be unknown to the master, the officer may open and examine it, and if deemed advisable for that purpose direct the same to be landed; and if any prohibited goods be found therein they shall be forfeited. CHAP. 13.

Duty of collector where contents of package unknown.

10. If a vessel having live stock or perishable articles on deck shall arrive after business hours, the collector, gauger or any landing waiter may permit the master to unlade the same before report; but report shall in such case be made as soon as may be after the next opening of the office.

Live stock may be unladen before report—when.

11. The collector may permit the master of any steamboat employed regularly in the conveyance of passengers, upon due report of such boat, to deposit the cargo in a warehouse to be provided by the owner or agent of the boat and approved by the collector, the owner or agent having first given general security by bond with two sureties for payment of the full duties of importation on all such goods as shall be at any time so warehoused therein, or for the exportation thereof; and goods so deposited shall be deemed to be on board the importing steamboat, and shall be subject to the same regulations, penalties and forfeitures, as if they had not been taken thereout; and the master or owner of the steamboat shall have the same lien on the goods for freight or other charges as if the same had not been deposited in the warehouse, but shall not be entitled to any rent for the goods so deposited. The owner or consignee of the goods must make entry thereof within six days from the time of their being deposited in the warehouse. Provided that if a steamboat shall happen to arrive at night or before or after the appointed office hours, it shall be the duty of the collector or other proper officer, to attend until all the goods intended to be landed shall be safely deposited in the warehouse.

Goods by steamers may be unladen and entered.

12. No rum, brandy, gin, or alcohol shall be imported or brought into the province by sea or inland carriage or navigation, in any cask or package not capable of containing at least one hundred gallons; nor shall any such liquor in any smaller cask or package be exposed for sale, or be in the possession of any person unless imported, or unless the same shall have been transferred to such smaller cask or package after it shall have been brought into the province, of all which the proof shall be upon the party in possession. Any person offending against any of the provisions of this section shall forfeit forty dollars for every such cask or package, and the liquor shall be forfeited. Nothing in this section contained shall apply to any such liquors imported into the province from Europe, the British West Indies, or any of the British possessions in North America. But the board of revenue

Liquors, how imported.

CHAP. 13. may permit spirituous liquors to be imported in casks or packages containing not less than thirty gallons for such periods, and in such places as may be specified in the order. The board may order forfeited liquors to be destroyed, having first ascertained the saleable value thereof by appraisement, and allowing such compensation in respect of the seizure as they shall approve, and which shall thereupon be paid out of the treasury.

Board may order destruction of forfeited liquors.

Attendance of revenue officers on board.

13. Revenue officers may board any vessel arriving, and stay on board until all the goods intended to be unladen shall have been delivered. They shall have free access to every part of the vessel, with power to fasten down hatchways, the forecastle excepted, and to mark and secure any goods, as may be deemed advisable. If any place, box or chest be locked, and the keys withheld, the officer, if he be a landing waiter or seizing officer, or a collector, guager, or weigher, may open the same; and if he be not an officer of that degree he shall send for his superior officer, who may open the same. If any goods be found concealed on board they shall be forfeited. If the officer shall place any mark, lock, or seal, upon any goods, and the same shall be wilfully altered, opened, or broken before the delivery of the goods, or if goods be secretly conveyed away, or if hatchways fastened down by the officer be opened or broken by the master, or with his assent, the master shall forfeit two hundred dollars.

Directions in case of partial entry.

14. When report shall be made that part only of the goods are intended to be unladen at that port, the entry shall be confined to such goods, and entry outwards coastwise shall be made of the goods intended for any other port; and on arrival at any such other port the like proceedings shall be adopted with respect to the goods there to be landed, as hereinbefore directed in respect of the goods landed at the first port. But if at any of the ports the residue of the goods shall be designed to be shipped out of the province, then entry outwards for exportation shall be made, and the regulations applicable thereto attached.

Importers entry inwards.

15. The importer shall within three days after the entry of the ship make entry inwards of all goods not intended for exportation in the same ship to parts out of the province, by delivering to the collector or other proper officer a bill of entry thereof, fairly written in words at length, containing the name of the importer and of the ship and master, and of the place within the port where the goods are to be unladen, and the situation of the warehouse if the goods are to be warehoused, and the name of the person in whose name the goods are to be entered, with the particulars of the quantity and quality of the goods and the packages containing the same with their marks and numbers, and whether the goods are of

the production of British America or otherwise, and of the number, guage, weight, measure or value upon which duties are payable thereon; and shall also at the same time deliver two or more duplicates of such entry as may be required by the collector, in which all such sums and numbers may be expressed in figures, and the particulars in all such entries shall be written and arranged as directed by the collector, and one of such duplicate entries signed by the collector shall be the warrant to the landing tide waiter for the landing or delivery of the goods. If the importer do not make such entry within the time specified, the collector upon twenty-four hours notice to the owner of the goods, if known, may land the goods and deposit them in warehouse at the expense of the owner.

16. No entry or permit shall be deemed valid unless the same shall correspond with the ship's report, and also with the manifest and certificate or other document respectively where the same are requisite, nor unless the goods shall have been properly and particularly described in such entry or permit.

What a valid entry.

17. The importer shall at the time of entry of any goods, either pay down the duties thereon, or having entered the same for warehouse, enter into the bonds in that respect prescribed by law, or otherwise a permit shall not be granted for the landing thereof; and the collector or other officer shall secure the same and cause them to be sold at public auction within twenty days thereafter, at such time and place as such officer shall by at least four days' public notice appoint for that purpose, and the proceeds shall be applied, first, in payment of the freight and of the charges occasioned by the securing and sale of the goods, secondly in payment of the duties thereon, and the surplus, if any, shall be paid to the importer or other person authorized to receive the same.

Duties to be paid or goods warehoused before permit granted.

18. If any person other than the master of the ship shall fraudulently make any entry inwards of any goods without authority from the proprietor or consignee, he shall for every offence forfeit two hundred dollars.

Penalty for entry by persons unauthorized

19. No goods shall be unladen until entry made and permit granted therefor; nor shall any goods be unladen except at a place where an officer is appointed to attend, unless authorized by the permit; nor shall any goods be unladen except in the presence of the officer or with his permission. But the board may make regulations for carrying goods coastwise.

Goods—how unladen.

20. All goods unladen contrary to law shall be forfeited.

Goods improperly unladen forfeited.

21. Where goods are liable to duty, according to the number, weight, guage, or measure thereof, upon the report of the ship and cargo being made, the collector shall grant a permit for the unlading of the goods intended

Goods chargeable with duty by number, weight, &c., how unladen.

CHAP. 13. to be landed at such place as shall be most convenient to the importer, and as soon as landed the collector shall cause the same to be weighed, counted, guaged, or measured, according as the duties are chargeable thereon, and shall cause casks or packages of spirituous liquors to be marked on their heads, with the name of the place whence they shall have come, with the contents, and the guager's surname, or otherwise, as the board shall direct; and shall cause a duplicate return in writing of the contents of each cask or package with reference to the numbers and marks, signed by the guager and weigher, to be filed in the collector's office; and thereupon the importer shall make the entry. If any such goods shall be removed from the place named in the landing permit without a removal permit, they shall be forfeited.

Entries by bill
of sight in cer-
tain cases.

22. If the importer or his agent shall subscribe a declaration before the collector or other proper officer, that he cannot for want of information make a perfect entry, the collector may receive an entry by bill of sight by the best description of the goods that can be given, and grant a permit for the landing thereof, and the same shall be at once landed, and at the expense of the importer searched by the proper officer, and in the presence of the importer if he shall desire it, and within three days after the goods have been landed the importer shall make perfect entry thereof, and in default the goods shall be taken to a warehouse, and if entry shall not be made within one month thereafter they shall be sold, and the duties thereon, together with warehouse rent and other charges, shall be taken out of the proceeds, and the balance paid to the importer or owner. If any package shall have been landed from a vessel, and goods shall be found concealed therein packed to deceive the revenue officers, the package with all its contents shall be forfeited.

Goods abandon-
ed for duties
how disposed
of.

23. Whole packages of goods may be abandoned for the duties thereon payable, and shall in such case be described in a written notice of abandonment to be given to the collector, and thereupon the same shall be sold as directed by the board, and after payment of charges the duties shall be paid out of the proceeds and the balance be paid into the treasury.

Abatement of
duties allowed
on damaged
goods.

24. If goods not charged with duty according to the number, weight, guage, or measure thereof, shall receive damage during the voyage, an abatement of duties shall be allowed proportionate to the damage, provided satisfactory proof be adduced to the board or officer acting therein under their directions, that the damage was received after the goods were shipped in the importing ship and before they were landed, and provided claim be made on the first examination of the goods. The officers of the revenue shall examine such goods, and make an abatement of

duties proportioned to the damage which in their opinion they shall have received; but if the officers be incompetent to estimate the damage, or if the importer be not satisfied with the abatement by them made, the collector shall appoint two experienced and disinterested merchants, who shall at the expense of the importer examine the same, and subscribe a declaration on oath before the collector of what in their opinion the damage is, and the collector may make an abatement of duties in accordance therewith.

25. Where duties are charged according to the value of the goods, the importer or his agent shall declare on oath what is the invoice price thereof at the place whence they were imported, and that he believes such invoice price is the current value thereat, and shall at the same time exhibit to the collector the original invoices, and certify on oath that they are the original invoices, and that they contain all the dutiable goods imported by or belonging or consigned to him in the vessel specified in the entry, to the best of his belief; or if he has not and cannot procure the original invoices he shall make oath thereof, and account for his want of the same, and shall also state on oath what he believes to be the current value of the goods at the place whence they were imported as near as can be ascertained. All such oaths shall be signed by the party attesting and be taken by the collector, or in case of his absence by his chief clerk or authorized substitute.

Invoices on entry to be certified under oath.

26. If it shall appear to the collector or other proper officer that goods liable to duty according to their value, have been valued below their real value under the last preceding section, he shall appoint two persons to examine the same, and such persons shall declare on oath before the collector, or other proper officer, at what, in their opinion, the same should have been valued, and the same shall be deemed the real value upon which duties are chargeable. Goods to be thus appraised may be taken to a public warehouse for that purpose at the expense of the importer. If the appraised value of these goods shall exceed by ten per cent or more the value declared on entry, then in addition to all duty imposed by law, there shall be levied and paid a duty of twenty per cent advalorem on such appraised value; but the duty shall in no case be assessed on an amount not less than the invoice value. The appraisers shall receive two dollars for their valuation, to be paid by the collector or other proper officer, and charged in his account.

Proceedings where goods are under-valued.

27. The value of goods not chargeable with duties according to the number, measure, guage, or weight thereof, brought into the province under the denomination of prize goods, or which shall be sold by order of the court of vice admiralty, or which shall become forfeited,

Prize goods, duties on.

CHAP. 13. shall, if the value thereof cannot be ascertained by the means hereinbefore prescribed, be ascertained by the gross price which the same shall bring at public auction. And all such goods, whether chargeable to pay duties according to value or to number, weight, gauge, or measure, shall be sold at public auction within two years after importation, reasonable notice of the sale being given by the person charged therewith to the collector, and the purchasers shall be considered the importers and pay the duties thereon.

Surplus stores
liable to duty.

28. The surplus stores of vessels arriving in this province from parts beyond the seas, shall be subject to the same duties and regulations as if imported as merchandise; but if it shall appear to the collector that such stores are not excessive or unsuitable, under the circumstances of the voyage, he may permit them to be entered for the private use of the master or owner, or of any passenger to whom the same may belong, on payment of the proper duties, or to be warehoused for the future use of the vessel.

Goods compounded of
different materials,
duties on,
how charged.

Goods from
Britain or British
possessions must
have been cleared
outwards.

29. Where goods are manufactured or composed of different materials, they shall be charged with the highest duty to which any of the component parts are liable.

30. No goods shall be imported as from the united kingdom or from any British possession if any advantage attach to such distinction, unless they shall appear upon the cockets or proper documents to be duly cleared outwards at the port of exportation in the united kingdom or such British possession, nor unless the grounds upon which such advantage is claimed be stated in the cocket or document.

Land-borne
goods liable to
duty.

31. Goods which might be imported by sea may be brought by land or inland navigation into the province from any adjacent British colony, and they shall be subject to the same duties, regulations, penalties and forfeitures as the like goods if imported would be subject to, so far as the same are applicable; and if any goods shall be brought into the province contrary to this provision, or if they shall be removed from the place appointed for the examination thereof by the revenue officers before the duties thereon shall have been paid, such goods, together with the vessel or carriage and cattle which shall have brought the same, shall be forfeited.

Duties, when
payable at
Digby or Annapolis.

32. Vessels entering the gut of Annapolis may be reported and entered, and the duties on goods therein imported paid either at the ports of Digby or Annapolis.

Where vessel
receiving damage
puts into
a port; goods,
how landed.

33. If any vessel having received damage shall put into another port in this province than that to which she shall be bound, having dutiable goods on board which it may be necessary to land for the purpose of repairing the vessel in order to enable her to proceed on her voyage,

the collector, upon application of the master or agent, CHAP. 13.
may permit such goods to be unladen and deposited in a warehouse in the custody of the collector; and the collector shall cause to be taken an exact account of the packages and contents, and entry of the goods shall then be made by the master or agent as hereinbefore directed, and they shall remain in the custody of the collector until the vessel is ready for sea, when upon payment of storage and the reasonable charges of unlading and storing, the collector shall deliver up the same to the master or agent to be exported from the province under the same security and regulations as if such goods had been imported in the usual manner, and such goods shall not be subject to duty. No person shall be entitled to the benefit of this section who shall have sold any of such goods, except such as it may have been necessary to sell to defray the expense of repairs and charges of the vessel, or as may have been authorized by the board. If goods are sold for payment of repairs and charges they shall be subject to duty, and shall be warehoused, or the duties thereon paid by the purchaser.

34. The owner or salvor of dutiable goods saved from the sea, in respect of which any salvage shall have been lawfully awarded or paid or agreed to be paid to the salvors, may sell so much thereof as will pay the salvage, and upon production of the award, or satisfactory proof to the board of such payment or agreement therefor, the board shall allow the sale of goods free of duty to the amount of the salvage, or to such other amount as to them shall appear proper.

Goods sold for salvage may be exempted from duty.

35. Goods derelict, flotsam, jetsam, or wreck, or landed or saved from any vessel wrecked, stranded, or lost, brought or coming into the province, shall be subject to the same duties as goods of the like kind imported are subject unto; if of such sort as are entitled to allowance for damage, such allowance shall be made under the direction of the board. If any person shall have in his possession in port or on land any such goods, the same being dutiable, and shall not give notice thereof to the nearest revenue officer without unnecessary delay, or shall not on demand pay the duties thereon or deliver the same to the proper officer, he shall forfeit two hundred dollars and the goods be liable to seizure; and if any person shall remove or alter, in quantity or quality, any such goods, or shall unnecessarily open or alter any package thereof, or shall abet any such act before the goods are deposited in a warehouse under the custody of the revenue officers, he shall forfeit two hundred dollars; and if the duties on such goods are not paid within eighteen months from the time when the same were so deposited, the same may be sold in like manner and for the same purposes as goods imported may in such

Wrecked goods liable to duty.

CHAP. 13. default be sold. If they cannot be sold for enough to pay the duty they shall be delivered over to the person entitled to receive them, and shall be deemed unenumerated goods, and charged with the lower duty accordingly; but any person having lawful claim to such goods, or being in possession thereof, shall be at liberty to retain the same in his own custody, on giving bond with two sureties approved by the collector, in double the value of the goods for the payment of the duties thereon at the expiration of a year, or to deliver such goods to the proper officer in the same condition as they were at the time of taking possession. Nothing in this section contained shall extend to goods in the custody or under the management of any commissioner for the Isle of Sable.

Goods, how,
when and
where to be
unladen.

36. No goods, except those allowed to be landed without permit, shall be unladen from any vessel arriving from parts beyond the seas, or arriving coastwise with dutiable goods on Sundays or holidays, and such goods shall be unladen only in the day time, and between such hours as the board shall appoint, and such goods shall be unladen only in the presence or with the authority of the proper officer, and at the place expressed in the permit; and no such goods after being unladen shall be transhipped, or after having been put into any boat to be landed shall be removed into any other boat or craft previously to their being landed, without the permission of the proper officer.

Expenses con-
nected with the
landing of
goods, how
borne.

37. The unshipping, carrying, and landing of goods, and the bringing the same to the proper place after landing for examination, and the putting the same into the scales and taking them thereout after weighing, shall be performed by or at the expense of the importer.

Vessels enter-
ing Great Bras
d'Or.

38. Vessels entering the Great Bras d'Or may be required to be reported and entered at such place and in such manner as the board may from time to time direct.

Package may
be opened.

39. Any package of dutiable goods may be opened by the collector of customs at his discretion, in order to ascertain the contents, and any goods found therein and not agreeing with the entry shall be forfeited, and packages intended to be so opened may be taken to a public warehouse for that purpose at the expense of the importer.

Duties on
compounded
liquors.

40. All liquors or liquid goods mixed, compounded, or adulterated abroad and so imported into this province, shall be liable to the same rate of duty upon the whole quantity as if the goods wholly consisted of that article, in the compound of which if imported separately, would pay the highest rate of duty; but this provision shall not include varnish.

CHAPTER 14.

OF THE WAREHOUSING OF GOODS.

1. The appointment of warehouses for the securing of goods liable to duty already established is confirmed, but may be annulled by the board of revenue.

Appointment of warehouses.

2. The board may by order establish other warehouses at any warehousing port, and may declare what goods may be warehoused therein; and may also annul any order establishing such warehouses, but all such orders shall be forthwith transmitted to the governor in council, and published.

Board may establish other warehouses and make orders.

3. The importer of any dutiable goods may warehouse the same without payment of duty on the first entry thereof, on entering into a bond to the collector with two sureties by him to be approved in double the amount of duties, which bond shall be in the form now in use, and shall be otherwise made and executed as the board may direct; and if any of such goods shall be thereafter entered for home use the duties thereon shall be paid at the time of such entry, and at the same rate as if then imported and entered for the first time. If within two years from the date of the first entry the goods or any part thereof shall be sold, the collector may admit fresh security by bonds with sureties from the purchaser, and cancel the original bond or exonerate the parties thereto to the extent of the new security, but such new security shall not be given for a less sum than one-fifth part of the duties mentioned in the condition of the original bond.

Goods may be warehoused and bonds given.

4. If goods entered for warehouse shall not be deposited therein within the time and in the manner directed by the proper officer, or shall afterwards be taken out of warehouse without entry therefor, they shall be forfeited.

Goods entered for warehouse forfeited in certain cases.

5. Upon entry and landing of any goods to be warehoused the proper officer shall take a particular account thereof and mark the contents on each package, and enter the same in a book to be kept for the purpose; and no goods warehoused shall be delivered from warehouse except upon entry and under care of the proper officers for exportation, or upon entry for home use and payment of the duties. Whenever the whole of the goods warehoused under any entry shall be cleared from warehouse, or whenever further time shall be granted for any such goods to remain warehoused, an account shall be made out of the quantity upon which the duties have been paid and of the quantity exported, and of the quantity, to be then ascertained, of the goods still remaining in the warehouse,

Duty of officer on entry of goods for warehouse.

CHAP. 14. deducting from the whole the quantity contained in any whole package which may have been abandoned for duties; and if there shall be any deficiency of the original quantity, the duty, except as hereinafter provided, payable upon the deficiency, shall then be paid.

Goods how stored and secured in warehouse.

6. Goods warehoused shall, by or at the charge of the owner, be stowed in such manner as that easy access may be had thereto, under penalty on such owner of twenty dollars for every omission; and they shall be stowed in such parts or divisions of the warehouse and in such manner as the collector shall direct, and the warehouse shall be secured in such manner, and visited only at such times, and in the presence of such officers, and under such regulations, as the collector, under the authority of the board, shall direct.

Samples may be taken.

7. The collector, under the regulations of the board or in his own discretion, may permit samples to be taken of goods warehoused, without entry and without payment of duty, except as the same may eventually become payable on a deficiency of the original quantity under the provisions of this chapter.

Owners may do certain acts to goods while in warehouse.

8. The collector, under the regulations of the board or in his own discretion, may permit the proprietor of goods warehoused, at his own expense to sort, separate, pack and repack the same as may be necessary for their preservation or more convenient disposal, and under the regulations of the board to draw off liquors into bottles or casks, and to mix brandy with wines, and to fill up casks of liquors from other casks thereof respectively in warehouse, and to rack off wines from the lees, or mix wines; and he may also allow portions of goods so separated to be destroyed, but without prejudice to claim for duty upon the whole original quantity. Whole packages may be abandoned to the collector for duties, and shall not remain liable thereto. No portion of goods less than a whole package shall, however, be taken out of the warehouse at any time.

Goods may be removed from one warehouse to another.

9. Goods warehoused may, under the authority of the collector, be delivered on entry without payment of duty except for any deficiency, for removal to another warehouse in the same or another port in the province under bond to the satisfaction of the collector, or such other regulations as the board may make for the re-warehousing thereof or payment of duties thereon.

Limitation of time for keeping goods warehoused.

10. Goods warehoused shall be cleared for exportation or entered for home use within two years from the first entry thereof; and if not so cleared or entered the collector unless otherwise directed by the board, shall sell the same, and the proceeds shall be applied—first to the payment of warehouse rent and other charges, next of duties, and the surplus, if any, shall be paid to the proprietor.

How goods in warehouse may be transferred.

11. When goods in warehouse are sold, the seller shall give the buyer a transfer note containing the particulars of

the goods and the date of sale, and the purchaser shall lodge the same with the warehouse keeper, who shall make a minute of the transfer in a book to be kept for the purpose, and which shall be produced on application. If this provision shall not be complied with, the goods, so far as respects the officers of the revenue, shall be held the property of the seller. CHAP. 15.

12. If goods warehoused shall, with the owner's sanction, be fraudulently concealed in or removed from the warehouse, they shall be forfeited; and if the proprietor, or any person with his knowledge, shall fraudulently open the warehouse or gain access to the goods, except in the presence of the proper officer in the execution of his duty, or shall fraudulently adulterate, reduce or increase the strength of liquors, such proprietor shall for every offence forfeit four hundred dollars.

Penalties for interference with warehoused goods.

13. If goods entered for warehouse, or for delivery therefrom, shall, by unavoidable accident, be lost or destroyed either on shipboard or in the landing or shipping, or the receiving into or delivering from the warehouse of the same, or if any such goods shall be destroyed, or, being liquors, shall leak or evaporate while in the warehouse, the board may remit or return the duties thereon, but no abatement shall be made in respect of deficiency in quantity of liquors or of wastage in any article, unless the goods shall have been warehoused six months.

Duties on goods entered for warehouse, remitted in certain cases.

14. If the importer of any goods entered for warehouse and landed, shall before the same are deposited in the warehouse, further enter the same or any part thereof for home use or for exportation, as from the warehouse, the goods so entered shall be considered constructively warehoused, and may be delivered for home use or for exportation, as the case may be.

Goods entered for warehouse, re-entered for home consumption.

15. Goods warehoused shall continue liable for freight, as if on shipboard.

Warehoused goods liable for freight.

CHAPTER 15.

OF THE EXPORTATION OF GOODS AND OF DRAWBACKS.

1. Whosoever shall export any goods on which on their entry inwards for home use the duties shall have been paid shall be entitled to a drawback of the whole amount, such goods being of the quantity or value for which a drawback is allowed, and all drawbacks shall be under the management of the board of revenue.

Drawbacks allowed.

CHAP. 15.

Warehoused
goods exported
free of duty.

No goods ex-
ported till en-
try and permit.

Entry to be
made of goods
entered for
drawback.

Bond.

Penalty where
unauthorized
party enters
goods outward.

What a valid
permit.

Drawback
allowed; on
what granted.

2. All goods warehoused on the importation thereof may be exported from warehouse without payment of duty.

3. No goods on which upon exportation any drawback is intended to be claimed, and no goods intended to be exported from the warehouse, shall be laden until entry outward shall have been made and permit granted therefor; and no goods shall be laden except at some place at which an officer is appointed to attend, and except in the presence or with the permission in writing of the officer; but the board may make such other regulations for carrying goods coastwise as may be expedient. All goods laden contrary to the provisions of this chapter or to any such regulations shall be forfeited.

4. The person entering goods outward for drawback or for exportation or from the warehouse shall deliver to the collector a bill or entry written at length, containing the name of the exporter, of the ship and of the master, and of the place where bound—the particular place within the port where the goods are to be laden, the particulars of the quality and quantity of the goods and the packages, their marks and numbers and the value thereof; and the collector shall thereupon grant his shipping permit, which shall be written upon or annexed to a copy of the entry to be made by the exporter.

5. Upon the entry outwards of any goods from the warehouse, the exporter shall give a bond in double the duties, with two sureties that they shall be landed at the place for which they may be entered or accounted for to the board.

6. Every person who shall make entry outwards of goods for drawback or for exportation from warehouse, not being the proprietor thereof nor the master of the vessel, shall for every offence forfeit two hundred dollars.

7. No entry outwards nor any shipping permit, or permit for taking goods from warehouse for exportation, shall be deemed valid unless the particulars of the goods and packages shall correspond with the particulars in the entry inwards for home use or in the entry for warehousing, nor unless they shall have been properly described in the entry outwards, by the character, denomination and circumstances under which they were originally charged with duty; and any goods laden or taken out of the warehouse by an entry outwards or shipping permit not so corresponding or not properly describing them shall be forfeited.

8. A drawback of the whole duties upon goods on which the duties shall have been paid shall be allowed upon any quantity of wine not less than twenty-five gallons, or upon any quantity of spirits or other liquors not less than one hundred gallons, exported in the original packages, and upon any quantity not less than three

hundred weight of coffee, or any quantity not less than ten hundred weight of sugar, or any quantity not less than two hundred gallons of molasses, or any quantity not less than five hundred pounds of leather, or any quantity not less than two hundred and fifty pounds of tea, three hundred pounds tobacco, and upon any amount not less than one hundred and twenty-five dollars of the original value of any articles charged according to the value.

9. Before any goods not exported from the warehouse and being charged with duty according to the weight, guage, or measure, shall be laden for exportation, the shipping permit shall be exhibited to the guager and weigher, who shall thereupon, without fee, guage or weigh them before shipment, and certify on the permit the weight, guage, or measure thereof.

Shipping permit to be certified by guager.

10. So soon as any goods so entered outwards, not being from warehouse shall have been actually laden, the master and exporter shall make an affidavit annexed to the entry that the goods are shipped for exportation and not to be relanded or disposed of in the province, and that the same, to the best of their knowledge and belief, were part of the stock of the person by whom they were entered for home use, and that the goods, if subject to *ad valorem* duties, are of the value stated in the entry, and that the same is the true value at the place from whence they were originally imported; and shall specify the office where entered and the date of entry, and that they are of the same quality, proof and description as when imported or as described in the entry outwards.

Affidavit to be made by persons entering goods outwards

11. If within one year from entry outwards there shall be produced a certificate annexed to the shipping permit and signed by some principal officer of the customs or colonial revenue at the place to which the goods were exported, or if such place be a foreign country, of any consul or vice consul resident there, or an affidavit annexed to the permit of any person resident at the place and certified by a notary public or magistrate, and in which certificate or affidavit it shall be stated that the goods were actually landed at some place out of the province, or that they were lost, or that the vessel had never arrived at her destination and was supposed to be lost, the bond shall be cancelled, or if the duties have been paid the board may allow the drawback thereon, and the exporter shall be entitled to receive the amount of the duties at the receiver general's office. All bonds not so cancelled within twelve months shall be enforced.

Drawback on certificate.

12. Whenever dutiable goods shall be sent coastwise, the person to whom they are sent may export them and receive the drawback in the name of the importer; but they must have been duly entered at the first port for exportation to the second port coastwise, and the shipping

How drawback obtained on goods sent coastwise.

CHAP. 15. permit granted, in which it shall be stated that the duties have been paid or secured at the first port, the importing ship's name, the place whence and the time when they were imported, the marks and numbers of the packages; and all liquors must be in the original packages.

Master delay-
ing to unlade to
pay tide waiter.

13. If the master of a vessel in which a part of the imported goods are intended to be exported shall unnecessarily delay unlading the goods intended for landing, or after unlading them delay longer than three days proceeding on the voyage, he shall pay every day to the tidewater employed the regular wages which would in ordinary cases be chargeable against the government, and the tidewater may recover the same before a justice of the peace, and the collector shall withhold the clearance until the same are paid, with costs, if incurred.

Articles for
army and navy
exempt.

14. All tea, coffee, brown sugar, flour, bread, cheese, oatmeal, peas, salted suet, vinegar, oil, raisins, currants, salted beef, salted pork, butter, and cocoa, and all articles required for the military hospital, imported and warehoused or drawn from warehouse for the army or the military hospital, or navy or naval yard, by any commissary or government contractor, and which articles shall be issued and used in such service, shall be exempted from duty; and when they are required to be delivered from the warehouse the entry shall be made as for home use, and shall state that they are solely for the use of the army or military hospital, or navy or naval yard, and at the election of the board the duties shall be deposited, or a bond with two sureties and in double the duties shall be given to deliver them to the officer authorized to receive them for such service, and to account for them to the satisfaction of the board or for the duties thereon.

Goods for army
and navy how
delivered from
warehouse.

15. Upon the duties being lodged or security given a permit shall be granted, and the goods shall be delivered from warehouse in the presence of the revenue officer, and shall be conveyed and delivered in presence of a revenue officer to the commissary or other officer appointed to receive the same for the use of the army or military hospital, or on board of some of her majesty's ships, or into the naval yard, and a receipt therefor shall be signed on the permit. If any of the articles or any portion of them shall not be issued or used in the service for which designed, from being unsuitable or from any other cause, the duties shall be paid thereon, and an account thereof shall be returned to the collector under certificate of the proper officer. A return shall also be made to the collector by the proper officers of all of the said articles actually issued to and used by the troops in garrison, and as far as practicable actually used in her majesty's ships or the naval yard; and no contractor shall be entitled to return of duties deposited except to the

If not used in
the service
duty shall be
paid.

Return of
articles used.

amount of duties on the articles comprised in such last mentioned return, and when a bond has been given every contractor shall be bound to pay the difference between the amount of such duties and the full amount of the duties on all the articles so delivered from the warehouse. The board of revenue may make such other regulations as it may deem proper concerning articles delivered for the use of the army and navy; and in every case, when the board shall be satisfied that the articles delivered from warehouse have been actually used by her majesty's troops or navy, the duties deposited shall be returned or the bond cancelled; and this exemption from duty shall only apply to articles delivered to the military or naval authorities in the original package.

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No return of duties except goods specified in return as used.

Board may make other regulations.

Exemption only for goods in original package.

16. If any of the above enumerated goods shall be shipped for such service after the duties have been paid, a drawback of the whole duties shall be allowed; but a permit for the delivery of them for such use, specifying the quantities thereof, with marks, numbers, or packages containing the same, shall have been first obtained from the collector, and the goods shall be conveyed and delivered in manner as in the preceding section prescribed for goods taken from warehouse, and the like receipts on the permits, and verification thereof made; and thereupon the amount of the duties paid thereon shall be repaid from the provincial treasury.

Drawbacks, how obtained on shipment of such goods.

17. Where such goods are charged with duty according to the gauge, weight, number or measure, they shall be gauged, numbered, or weighed, and marked, and the drawback paid accordingly.

Goods shall be gauged and weighed; if so charged with duty.

18. If such goods shall be fraudulently relanded in this province, or applied otherwise than for such use, they shall be forfeited; and every person concerned therein shall forfeit two hundred dollars.

If relanded in the province they shall be forfeited.

19. The board may, upon the application of the officer in command of any ship of war about to leave the province, grant a license to purchase for the use of the officers so many gallons of wine as shall be approved by the board as adequate to their supply for three months; and the name of the person from whom such wines are to be purchased shall be therein inserted.

Officers' wines purchased under license from board.

20. The person selling the wine shall obtain the permit and ship them according to the regulations, and the officers for whose use they have been purchased shall certify that they are actually on board of the ship ready for sea, and that no part shall be re-landed. The certificate, with the license, shall be delivered to the collector, and the bond on exportation from the warehouse shall be cancelled, or if the duties have been paid the drawback shall be allowed.

Bonds for such wines cancelled, or drawback allowed.

21. Wines may be delivered from warehouse in the original package for the use of the officers of the army in

Army officers' wines, &c.

CHAP. 15. the regimental messes in Halifax in the manner and subject to the returns, restrictions, and regulations in the preceding sections relating to articles delivered from warehouse for the use of the army, and the duties deposited shall be returned or the bonds cancelled on the certificate of the proper officer that the wines have been actually used by the officers in their regimental messes, and only as respects so much of the said wines as have been so used.

When agent may enter, &c.

22. If a proprietor of goods shall be resident more than ten miles from the office of the collector at the port of shipment, he may appoint an agent to make his entry and clear and ship his goods, or receive for him the drawback on his certificate of drawback, if payable to him; but the name of the agent and the residence of the proprietor shall be subjoined to the name in the entry and shipping permit, and the agent shall make the declaration on the entry which is required of the proprietor, and shall answer the questions that shall be put to him. Any trading corporation or company may appoint an agent for the like purposes.

Drawback when not allowed.

23. No drawback shall be allowed unless the goods be shipped within two years after the payment of the duties.

Agents may export and receive drawbacks from persons abroad.

24. If any goods which are to be exported for drawback be the property of a person residing abroad, having been consigned to some person residing in this province to be exported on account of the owner, such person may, as agent of the owner, enter, clear, and ship them, and receive the drawback thereon.

Board to make rules respecting exportation of liquors.

25. The board may make rules with regard to the exportation of any spirituous liquors on which a drawback shall be claimed, and for ascertaining the strength thereof for the allowance of the drawback, and for the prevention of fraud.

Goods entered for exportation forfeited if re-landed or not forwarded as cleared.

26. If any goods entered for exportation from warehouse, or for drawback, shall not be duly exported to the place for which they were cleared out, or shall be re-landed in this province, such goods not having been duly re-landed as short shipped or for other just cause, or shall be carried to New Brunswick or Prince Edward Island, not having been entered and cleared direct thereto, such goods shall be forfeited, together with any vessel or boat used in the infringement of this section; and all persons concerned in the violation of this section shall forfeit double the value of the goods.

Penalty for false documents to get drawbacks.

27. If any person in this province shall give any document in writing stating that goods have been landed in the province for the purpose of enabling any person to obtain a drawback thereon in the United States or in any of the colonies or provinces of North America, he shall, if unable to prove that the goods specified in such docu-

ment have paid the duties thereon in this province, for CHAP. 16.
every offence forfeit four hundred dollars.

28. All officers passing exportation bonds shall report to the board of revenue once in every three months, a list of all bonds remaining uncanceled after the lapse of twelve months from the date of execution, with a view that the penalty of such bonds be strictly enforced. Officers to make quarterly reports of bonds.

29. Upon the representation of the board, the governor in council may suspend the operation of any regulation in this chapter for so long a time as may be deemed proper. When governor may suspend regulation.

CHAPTER 16.

OF THE PREVENTION OF SMUGGLING.

1. The officers of the revenue may go on board any vessel within any port in the province and search her for prohibited and customed goods, and also on board any vessel being within one league of any of the coasts, and stay on board while she remains in port or within such distance; and if she shall continue hovering for twenty-four hours after the master shall have been required to depart, the officer may bring her into port and search her and examine her cargo, and examine her master upon oath touching the cargo and voyage; and if there be any prohibited goods on board, the ship and cargo shall be forfeited, and if the master shall not answer the questions demanded of him or shall not truly answer the same, he shall forfeit four hundred dollars and the ship shall be liable to seizure, and shall not be released until the penalty imposed on the master and the costs of seizure and detention are paid. Officers of revenue may board vessels.

2. Any revenue officer having first made oath before a justice of the peace that he has reasonable cause to suspect that goods liable to forfeiture are in any particular building, may in company with the justice who is hereby required to accompany him, enter such building at any time between sunrise and sunset, but if the doors are fastened then admission shall be first demanded, and the purpose for which entry is required declared, when, if admission shall not be given, the justice shall order the officer forcibly to enter, and when in either case entry shall be made, the officer shall search the building and seize all forfeited goods. These acts may be done by a revenue officer Officers may enter buildings in certain cases and how.

CHAP. 16. without oath, or the assistance of a justice of the peace in places where no justice resides, or where no justice can be found within five miles at the time of search.

Officers of revenue may have a writ of assistance.

3. Under the authority of a writ of assistance, which upon application of the board of revenue and due cause shewn, shall be granted by the supreme court or by any judge thereof and be in force for three months, any revenue officer, taking with him a peace officer, may enter any building or place in the day time, and search for and seize any goods liable to forfeiture, and if necessary for that purpose, break open any doors and packages.

Collectors may enter shops and take account of stock.

4. Every collector may at any time between sunrise and sunset enter into any building of any person dealing in dutiable goods and take an account of his stock, and if he shall refuse to open the door or shall obstruct the officer, he shall forfeit four hundred dollars.

Penalty for obstructing officers.

5. If any person shall obstruct a revenue officer employed as hereinbefore mentioned, or any person assisting him, he shall be guilty of a misdemeanor and be punished in the discretion of the court.

Custody of goods seized.

6. All goods seized under the revenue laws shall be forthwith placed in custody of the nearest collector, and secured by him under the directions of the board, or if seized by any officer in charge of any revenue vessel, shall be retained on board thereof until arrival at Halifax, and shall be held to be condemned, and may be sold without

Condemnation.

further proceedings, unless the person from whom they were seized or the owner of them, or some person on his behalf, shall within one month from the seizure, give a written notice to the seizer or to the collector in whose custody they are, of claim thereto. If claim be made within the month, then, subject however to the control of the board, the collector shall forthwith thereafter have the articles valued by three sworn appraisers who shall sign the valuation, and if it shall amount to one hundred and sixty dollars or upwards, an information shall be filed in

Information.

the supreme court, otherwise an information in writing, if the seizer think proper so to proceed, may be exhibited in the name of the collector before two justices of the peace, charging the articles seized as forfeited under some particular section and chapter to be therein referred to, and

Proceedings before justice.

praying condemnation thereof, and the justices shall thereupon issue a summons for all persons claiming interest in the seizure to appear at a certain time and place there to claim the articles or answer the information, otherwise the articles will be condemned, and a copy of the summons shall at least eight days before the time of appearance be served upon the person from whose possession the things were taken, or shall be left at or affixed to the building or vessel if there remaining, or at two public places nearest the place of seizure. If any person shall appear to answer

the information, the justices shall hear and determine the matter and acquit or condemn the articles, but if no person appear judgment of condemnation shall be given. The justices on condemnation shall issue a warrant to the collector to sell the goods. CHAP. 16.

7. If either party be dissatisfied with the decision of the justices, he may appeal to the supreme court at its next sitting in the county, and such shall be allowed upon security by bond being given to the satisfaction of the justices to abide the decision, which security, if the claimant appeal shall be in double the appraised value of the articles, but not less in any case than eighty dollars, and if the prosecutor appeal the security shall be in eighty dollars, and the proceedings shall be sent to the supreme court, which shall hear and determine the matter in a summary manner, and confirm or reverse the judgment with or without costs, and if there be judgment of condemnation, shall order the sale of the articles. Appeal to be allowed.

8. Where articles are condemned and liable to be sold, the collector shall forthwith sell the same at public auction, giving at least five days notice thereof by advertisements posted up in at least five of the most public places in the county or such other notice as the board may direct; but the board instead of such sale may direct the articles to be destroyed. Condemned articles, how disposed of.

9. The collector out of the nett proceeds of the sale after paying the expense of the proceedings, shall pay one-half part to the seizer and the remainder as the board shall direct, and the board may thereout grant a further sum to the seizer, or may recompense the informer, or any person assisting in the seizure. Proceeds, how applied.

10. If on the trial of any information or suit brought on account of any seizure made under this chapter judgment shall be given for the claimant and the judge or court before whom the cause is tried shall certify on the record that there was probable cause of seizure, the claimant shall not be entitled to costs, nor shall the seizer be liable to any suit or prosecution on account of the seizure; and if on the trial of any suit or prosecution brought against any person on account of any such seizure, judgment shall be given against the defendant, and the judge or court shall certify that there was probable cause for the seizure, then the plaintiff, besides the thing seized or the value thereof, shall not be entitled to more than four cents damages nor to any costs, nor shall the defendant in such prosecution be fined more than twenty cents. Regulation as to costs.

11. The officer may, within a month after notice, tender amends to the party complaining or his attorney or agent, and may plead such tender. Tender of amends

CHAP. 17.

Penalties upon
masters of
vessels and
others.

12. The master and owner of any vessel in which dutiable goods shall have been imported from any place without the province, such goods not having been warehoused or the duties paid thereon according to law, shall, over and above all other penalties to which they are liable, each severally forfeit for every offence not less than forty dollars, nor more than four hundred dollars, and shall also be jointly and severally liable for the duties; and every person concerned in importing into this province, or in bringing in, importing, landing, or receiving into this province, or having knowingly in his possession any such goods whereon the duties have not been paid, or which have not been warehoused, shall, for every offence over and above all other penalties to which he is liable, forfeit not less than forty dollars nor more than four hundred dollars, and be liable for the duties.

Vessels seized
how prosecuted

13. Vessels seized as forfeited may be prosecuted in the name of the attorney general or solicitor general, or any officer of the provincial revenue under authority of the board of revenue, by information in the supreme court. A copy of the information nailed on the mast or other conspicuous part of the vessel shall be notice to the owner and other persons interested; and if no claim be made at the expiration of a month, judgment of condemnation by default may be entered, and the vessel, her boats and appurtenances, be sold under execution. In the information it shall only be necessary to state concisely the cause of forfeiture and the chapter and section under which the forfeiture is charged. The court or a judge shall have power when a claim has been made to order delivery of the vessel on sufficient surety to respond the judgment and the value of the vessel.

Court may
order delivery.

Operation of
regulations,
how suspended

14. Upon the representation of the board the governor in council may suspend the operation of any regulations in this title for so long a time as may be deemed proper.

CHAPTER 17.

OF DISTILLERIES.

Distilling un-
lawful.

1. It shall not be lawful hereafter in this province to distil, manufacture, or rectify, any alcohol, rum, gin, or other intoxicating liquor or strong waters.

Penalties.

2. Any person violating the provisions of the preceding section, or suffering the same to be violated on his premises, shall be liable to a penalty of not less than two thousand dollars nor more than six thousand dollars.

3. Places fitted or suspected to be fitted for the distillation of intoxicating liquors, or for the manufacturing or rectifying of alcohol, rum, gin, or other intoxicating liquors or strong waters, may be entered and searched by any revenue officer, or by any person specially authorized by the board of revenue, and who in making such search is authorized to disconnect and remove machinery, vessels, and implements, and remove partitions, raise floors, and otherwise dismantle the premises, as far as may be necessary for such search, and who may seize and remove all machinery, vessels, and implements of every kind used in such distillation, manufacture, or rectification.

CHAP. 18.

Places fitted
may be entered
and searched.

May disconnect
machinery

4. All alcohol, rum, gin, and other intoxicating liquors or strong waters distilled, rectified or manufactured in this province, may be seized and forfeited in the same manner and by the same proceedings as if the same were smuggled.

Liquors may be
seized and for-
feited.

5. Intoxicating liquors and strong waters in this chapter shall not include porter, ale, beer or cider.

Porter, ale,
beer, cider, not
included.

Continued 1865, Chap. 24.

CHAPTER 18.

OF LIGHT HOUSE DUTIES.

1. Vessels registered in the province shall on their first voyage pay ten cents per ton to the collector of the colonial revenue, or other person in that behalf appointed by the governor in council, who shall deliver to the master a certificate thereof, which shall exempt the vessel from further payment until the first day of April then next; and such vessel shall not be cleared at the custom house without production of the certificate; but new vessels registered in this province leaving the province on their first voyage, shall be exempted from duty unless they again return; and new vessels cleared on their first voyage after the first of September and returning to the province, shall be exempted from further payment of duty until the first of April next following on payment of one-half the amount of the above duty.

Light duties on
provincial ves-
sels.—how
secured.

New vessels
exempt.

2. Other vessels coming into the province shall pay on their arrival ten cents per ton to the collector or other person appointed as hereinbefore mentioned, who shall grant a certificate thereof which shall exempt them from further duty until the first day of April then next.

Light duties on
other vessels.

3. Vessels passing through the straits of Canso without the certificate hereinbefore mentioned, shall pay ten cents

Light duties on
vessels passing
through Canso.

CHAP. 18. per ton; and a certificate thereof shall be granted which shall exempt them from further payment until the first day of April then next.

Vessels in government employ exempted.

4. This chapter shall not extend to vessels or steamers belonging to or in the service or employment of her majesty's government, excepting steamers not belonging to her majesty and carrying mails, which shall pay duty, and shall not extend to any ships of war of foreign governments.

Collector's commission.

5. The person receiving the duty shall pay the same into the provincial treasury, deducting five per cent for his commission.

Penalty for non-payment.

6. If the master of any vessel liable to duties hereunder shall refuse to pay or depart without paying the same, he shall forfeit twenty dollars, to be recovered with the duties in the name of the officer.

Seizure authorized.

7. If the master shall not pay the duty when duly demanded, the officer shall seize the vessel and detain her until the same, together with the penalty of twenty dollars, is paid.

Vessels are to pay an additional toll of 1-16th of a penny per ton on each voyage.

8. All ships, whether sailing ships or steamships, navigating from any port or ports in this province to any port or ports in the united kingdom;

All ships, whether sailing ships or steamships, navigating from any port or ports in the united kingdom to any port or ports in this province;

All ships, whether sailing ships or steamships, bound from any port or ports in this province upon any trans-atlantic voyage; and all ships, whether sailing ships or steamships, arriving at any port or ports in this province after any trans-atlantic voyage, shall pay to the collectors of the colonial revenue, or other persons appointed in that behalf by the governor in council, in addition to the light house duties under foregoing section payable, a toll of one-sixteenth part of one penny sterling per ton of the burthen of every such ship for every such voyage; to be applied towards defraying the expense of maintaining the light house now erected on Cape Race, in the island of Newfoundland.

Exempt if toll paid at port of clearance.

9. Such toll shall not be collected from the master or owner of any ship arriving at any port in this province from any of the voyages above mentioned, if such master or owner shall produce a receipt for the toll for such voyage, signed by any officer appointed to receive such toll in the port of clearance or other port in the united kingdom or British possessions.

Toll, how collected and applied.

10. Such toll shall be collected in manner prescribed for light house duties by this chapter, and when paid into the treasury as therein prescribed, shall be transmitted, under the authority of the governor in council, to the board of trade, to be applied for the purpose mentioned in the eighth section.

11. A voyage under next preceding three sections shall be construed to mean a single trans-atlantic passage. CHAP. 19.

12. This chapter shall remain in force until the first of April one thousand eight hundred and sixty-five. Meaning of voyage.
Duration of act.

Amended 1865. Cap 11. also in

CHAPTER 19.

1868. Cap 8 page 12

OF LICENSES FOR THE SALE OF INTOXICATING LIQUORS.

1. The sessions in each county, upon the recommendation of the grand jury, shall annually appoint as many clerks of the license as they may think fit, and shall define the districts within which they shall exercise their authority, and such clerks of the license shall give bonds to her majesty with such sureties and in such penalty as the sessions may direct, for the faithful performance of their duties, and shall be sworn into office; and such officers shall be appointed although no licenses be granted in the county, provided that if the person so appointed shall die, refuse to act, remove from the county, or from any other cause whatever shall be unable to act, a special sessions for the county shall, upon the requisition of any three freeholders addressed to the custos requiring him to call such special sessions, meet and appoint a suitable person to fill such office, subject to the conditions above mentioned.

Clerks of the license, appointment of &c.

2. No intoxicating liquors shall be sold in quantities less than ten gallons, to be delivered at one and the same time, unless in the original package in which imported, such original package not to mean bottled liquors in quantities less than ten gallons, or by license, under the following penalties: for the first offence ten dollars, or imprisonment for twenty days in the county jail in event of non-payment of fine; for the second offence, twenty dollars or thirty days imprisonment; for the third offence forty dollars or sixty days imprisonment; and for every subsequent offence eighty dollars or three months imprisonment; and no such liquors shall be sold in the city of Halifax without license, unless in the original packages in which the same are imported, and when any intoxicating liquors are imported or sold in bottles contained in casks or cases, such casks or cases shall be considered the original packages.

No intoxicating liquors to be sold without license, except in original packages, and in quantities above ten gallons. Penalty.

By act of 1865.

Cap 11

Really not

Cap than 11

nor more than

\$50. Impr.

- 5 months 20

3. Licenses may be granted by the sessions upon the recommendation of the grand jury, except in the city of

Licenses, how granted.

exceed 500

CHAP. 19. Halifax, where they may be granted agreeably to the acts incorporating the same; but such recommendations shall be rejected in whole or in part by the sessions, who shall have power from time to time to determine the periods at which licenses for the sale of intoxicating liquors shall commence and expire; but no license to sell liquors shall be issued or granted to any person who now does or hereafter shall keep a brothel or house of ill fame; but in any county in which the majority of the sessions may be disposed to grant licenses to sell intoxicating liquors for beverage purposes, they shall nevertheless withhold such license in any polling district when a majority of the ratepayers petition the sessions against the granting of such licenses, and such decision shall remain in full force and effect until reversed by a majority of the ratepayers upon real or personal estate in any polling district where such action shall have been taken.

When sessions shall refuse licenses.

Kinds of.

4. Licenses shall be of the following kinds, viz.: tavern licenses and shop licenses, and in the city of Halifax and town of Pictou there may also be granted general licenses to persons holding tavern or shop licenses.

Forms of.

5. Licenses shall be in the form in schedule A.

Duty, how fixed

court fixes

price of licenses

Clerks Com.

6. The courts of sessions in the various counties, and the city council of Halifax, shall fix the amount of duty to be paid for each class of license and the fees to be paid to the clerk of license and clerk of the peace for issuing the same, and also the commission to be paid to the clerk of license for collecting and paying over such debts.

Duty when paid

7. Every person to whom a license shall be granted shall, before receiving the same and within fifteen days after the sitting of the sessions granting the same, pay down the whole duties, and shall also enter into a bond with two sureties in the form in schedule B, which bond shall be prepared by the clerk of the licenses, and when executed shall be filed with the clerk of the peace.

Bond.

Free licenses.

8. Licenses free of duty, or upon payment of a less duty than that by law imposed, may be granted to persons living on public roads little frequented, to encourage them in keeping public houses for the accommodation of travellers.

Justices and coroners prohibited.

Registry of licenses.

9. No justice of the peace or coroner shall hold a tavern or general license, or shop license.

10. the clerk of the peace and clerk of the licenses shall each register in a book to be kept for that purpose a list of licenses, with the dates of such licenses, the names, additions and residences of the parties so licensed, and a memorandum of the houses or shops for which such licenses were granted, and a statement of the number of bonds taken and of the amount of duties paid, and such books shall be exhibited when required to the sessions and grand jury.

11. If any person holding a tavern license shall not within ten days after obtaining the same, place a sign on the tavern with his name thereon, importing that liquors are there to be sold, and that entertainment for man and horse can be there had, he shall forfeit a sum not exceeding twenty dollars, and the neglect to do so for every ten days after every conviction, shall be deemed a fresh offence. CHAP. 19.
Tavern must have sign.
Penalty.
12. If any person not having a license shall place on any building or in the neighborhood thereof, any inscription importing that intoxicating liquors may be had there, he shall forfeit a sum not exceeding twenty dollars; and every continuation of such inscription for ten days after conviction, shall be deemed a fresh offence. Penalty for sign when no license.
13. If any person holding a tavern license shall not maintain good order on the premises, or if he shall permit raffling or gambling thereon, or shall on Sunday permit persons other than lodgers or persons coming for necessary victualling only, to remain about the premises drinking or idly spending their time, or where not holding a general license also shall permit anything other than victuals and drink usually consumed in a tavern to be exposed for sale on the premises, or shall not have reasonable accommodation for travellers and their horses, cattle and conveyances, he shall forfeit his license and a sum not exceeding forty dollars for every offence, in the discretion of the court before which he shall be convicted. Penalties for not keeping order.
Gambling, &c.
Drinking on Sunday.
Exposing goods for sale.
Not having accommodation.
14. If any person holding any license shall sell any intoxicating liquors on Sundays, except in the case of tavern keepers, to lodgers on the premises, he shall incur the like forfeiture as mentioned in the last section. Selling liquor on Sunday.
15. No person holding a shop license only shall sell less than one gallon of intoxicating liquors, to be delivered at one and the same time, or shall suffer any intoxicating liquors to be drank on the premises where sold, or any such premises to be opened on Sunday, under the same penalty as that mentioned in the thirteenth section. Shop license, restrictions of, &c.
16. No person shall recover or be allowed to set off any charge for intoxicating liquors in any quantity less than one gallon, delivered at one and the same time, and all specialties, bills, notes, agreements or accounts, stated, given, or made in whole or in part for or to secure any such charge, shall be void; but nothing herein contained shall extend to any charge made by a person holding a tavern license only against any boarder or traveller, and it shall not be necessary for any person wishing to take advantage of this clause to plead the same specially, but advantage may be taken thereof at any stage of the trial in motion for non-suit. Charges for liquor not recoverable if under one gallon.
Exceptions.
17. If any person holding a tavern license shall purchase from any servant or common laborer, any wearing apparel, tools, or implements of trade or husbandry, or Receiving goods, &c., from servants or in pawn.

CHAP. 19. household goods, or furniture made up, or shall receive from any person any goods in pawn, any justice of the peace upon sufficient proof on oath of the fact, may issue his warrant for restitution of the property and for payment of the costs, and in default thereof for levy and sale of the offenders goods for double the value of the property and costs, and the offenders shall also be liable to a penalty of eight dollars.

Form of proceeding.

Penalty.

Penalty against married women &c.

Breach of act.

Proviso.

Clerk may visit premises.

Penalty for obstructing clerk.

Clerk's accounts—when rendered.

Duties, penalties, &c.—to whom paid.

Penalties—how recovered.

Forms.

18. Married women, servants, or other persons concerned in any breach of this chapter, shall be liable to the penalty thereto attaching as if they were unmarried women or principals, provided the husbands or masters shall not have been prosecuted for the same offence; and upon any conviction of a married woman, servant, or other person under this section, the husbands, employers, or masters, shall not be afterwards sued for the same offence.

19. The clerk of the licenses may, whenever he sees fit, visit the premises of persons holding tavern licenses to see that the provisions of this chapter are complied with, and he shall prosecute all offenders against such provisions; and if any person shall obstruct him in the exercise of his duty, he shall forfeit the sum of twenty dollars, and may also be indicted for a misdemeanor, and fined and imprisoned in the discretion of the court.

20. The clerks of the licenses, except in the city of Halifax, shall render a half yearly account to the county treasurer of all duties collected, and of all penalties or portions thereof payable into the county treasury, which may have come into their hands, together with a statement of all judgments obtained for penalties so far as the same shall have come to their knowledge and which may be unsatisfied, and shall immediately on the receipt of any license duties, penalties, or portions of penalties, pay the same over to the county treasurer, deducting the commission.

21. Penalties under this chapter may be recovered in the name of any of the clerks of license in their respective districts, or of any other person who will sue therefor, in the same manner and with the like costs as if they were private debts, except that the summons shall be in the form in schedule C; and upon conviction such conviction shall be endorsed upon or annexed to the original summons in the form of schedule D, and the same, when signed by the justices, shall be held a valid conviction, and thereupon an execution for the amount therein mentioned shall issue in the form in schedule F; and upon the trial of any cause under this chapter either the prosecutor or defendant, if he desire it, or at the instance and request of the other party, may be examined as a witness, provided that when the prosecutor without being called by the other party appears as a witness, he shall not retain

*the Act of 1865, Chap 11, Sec 4, Clerk of Licenses. Co
Police officers may inform here all the*

any part of the penalty, but the whole shall be paid as directed in the next section, and the summons may be amended at the trial below or on an appeal; but the clerk of license, on information being given to him in writing, on having his costs guaranteed by two or more responsible parties, shall be compelled to prosecute the person informed against, under penalty of the same amount as would be imposed by the party informed against if convicted, to be recovered as an ordinary debt in the name of the person making such request.

22. Penalties under this chapter, except as provided in the preceding section, shall be paid one half to the person suing and the other half into the county treasury, except in the city of Halifax, where the same shall be paid to the officer now by law authorized to receive such monies.

23. Appeals from the decisions of the justices for any penalty or forfeiture incurred under this chapter, shall be granted in the same manner as in the case of summary trials before justices of the peace, and the defendant shall become bound with two sufficient securities in a sum double the amount of the judgment to prosecute such appeal, and to pay all costs, fines, and penalties that may be imposed and taxed in the final disposition of the suit, and also that during the pendency of the appeal, he or she will not violate any of the provisions of this chapter; and in the case of certiorari, instead of the bail required in such case, the same bond shall be given as in ordinary appeals, and in case of granting a new trial the court may impose such terms on either party as may best promote the ends of justice.

24. The bond to be given on such appeal or on issuing a writ of certiorari, shall be in the same form as that in schedule E.

25. If any person subpœnaed as a witness in any suit or prosecution under this chapter shall not attend at the time and place mentioned in the subpœna without just cause to be allowed by the court or justices before whom the suit or prosecution shall be had, or having attended shall depart without permission of the court or justices or shall refuse to be sworn or give evidence on the trial, he shall forfeit a sum not exceeding forty dollars, to be sued for and collected as an ordinary debt by the plaintiff, and for want of goods whereupon to levy he may be committed to jail and detained there for the same period of time as if he had been guilty of a first offence for selling liquors without license; but no person shall be obliged to attend or give evidence on any such trial until he shall have been paid his fees for travel and attendance.

26. In suits instituted by the clerk of the licenses, where the justice before whom the trial is had shall give judgment for the prosecution, or if he give judgment for

CHAP. 19.

Amendment of summons.

Clerk when compelled to prosecute.

Penalties; disposal of.

Except Halifax

Appeals—how granted.

Appeal bond.

Certiorari, bonds for.

New trial.

Bonds—form of

Penalty in case of non-attendance of witnesses.

How levied.

Must be paid fees.

Prosecutor, to be appointed.

CHAP. 19. the defendant shall certify there was reasonable ground for commencing the suit, the prosecutor shall be fully indemnified for all costs and expenses on both sides, to be taxed by a judge of the supreme court, and to be levied by assessment or amercement on the county.

Variance not to affect judgment

27. No judgment shall be withheld on account of variance between the proof and the summons if it appears to the satisfaction of the justices trying the cause that the defendant was aware of the real cause of complaint, but if the justices see fit for this cause they may continue the trial for another day, and no judgment shall be set aside for any variance or from any formal objection.

Justice may continue cause.

Sale by wife, &c.

28. Any sale of intoxicating liquors made on the premises of any person by the wife, child, or servant of such person, shall be considered presumptively as the act of the husband, parent, or master, and shall be punished in the same way as if such sale had been made by such husband, parent, or master in person, and the burthen of proof of innocence shall be thrown on such husband, parent, or master.

Mail carrier not to carry liquor.

29. No mail carrier shall knowingly carry in the same waggon or vehicle with her majesty's mails any intoxicating liquors under a penalty of not less than four dollars nor more than twenty dollars for each offence.

Sale to a minor or indian.

30. Any person holding a license who shall knowingly sell intoxicating liquor to a minor or to an indian, upon proof thereof before a justice of the peace, shall forfeit his license, and shall not again be capable of holding a license; and in case of sale to an indian shall also be liable to a penalty of twenty dollars for each offence, and in default of payment shall be imprisoned for a term of not less than ten days or more than twenty days.

Penalty for selling intemperate persons.

31. If the husband, wife, parent, child, brother, or sister, master, guardian, or creditor of any person addicted to the intemperate use of intoxicating liquors, or any justice of the peace or overseer of the poor residing within the poor district wherein such intemperate person resides, shall give notice in writing to any person engaged in the sale of intoxicating liquors that such person is addicted to the intemperate use of intoxicating liquors, it shall not thereafter be lawful, under any pretence whatever, for the person receiving such notice by himself, his servants or agents, directly or indirectly, to sell or give any intoxicating liquors to such intemperate persons to be used on the premises, or in any quantity less than ten gallons to be delivered and removed from the premises at one time, and any person knowingly violating the provisions of this section, upon proof of the truth of the statement contained in such notice, shall be liable to a fine of not more than twenty dollars for a first offence, and a fine of not less than twenty dollars nor more than forty

dollars, and imprisonment for a period of not more than thirty days, as the court or justices may direct, for a second or subsequent offence. CHAP. 19.

32. In any suit instituted for a breach of the provisions of this chapter, it shall not be necessary to state in the summons that the liquor sold was not contained in the original package in which it was imported, or that the same was sold without license or in quantities less than ten gallons, but the defendant, if claiming to be exempted by the operation of such exceptions, may set up the same as a defence, in which case the burthen of proof shall be thrown upon such defendant; and it shall not be necessary to attach particulars to the summons as in the case of ordinary civil suits, or to specify the particular kind of liquors sold; but in all cases it shall be sufficient in the summons to charge the party accused with having sold intoxicating liquors contrary to law to some person named in the summons.

Unnecessary statements in summonses.

What may be set up as a defence.

No particulars required.

33. In any such suit, in case it shall be alleged in the summons that the sale complained of was made to a person therein named, and on the trial the prosecutor shall fail to prove such charge, but proof shall be given of a sale to another person, the suit shall not thereby be defeated, but the justices shall adjudicate upon the offence so proved as if the same had been alleged in the summons, but in such case the defendant, upon application, shall be entitled to a continuance of not more than eight days to make his defence, and the prosecutor shall not be obliged again to prove his case, although if he choose he may bring additional proof in support of the prosecution, as well as proof to rebut the defence.

Proof of sale to persons not named does not defeat suit.

Defendant entitled to continuance.

34. No person imprisoned under execution issued upon any judgment for a breach of this chapter, shall be entitled to jail limits.

Persons imprisoned not entitled to jail limits.

35. Prosecutions for offences against this chapter, or suits brought on any appeal bond, shall be commenced within six months, and the clerk of the license or any private prosecutor may bring an action on such appeal bond without special leave obtained therefor.

Limitation of actions.

Action on appeal bond.

36. In case the constable or officer to whom a summons is delivered to be served shall not be able to effect a personal service, it shall be a sufficient service of the same to leave it at the dwelling house of the defendant, provided that the officer makes an affidavit that he believes that the defendant concealed himself, or in any way endeavored to escape service of such summons.

Service of summons, what sufficient.

Proviso.

37. In any county or township in which licenses for the sale of intoxicating liquors are not granted, it shall be the duty of the general sessions for such county or township, or a special sessions convened by the custos on application of five justices for such purpose, to appoint one suitable

Where licenses refused, agents appointed.

CHAP. 19. person for each township, or so many for each county as may be requisite, not exceeding five in number, to be called agents for the sale of alcoholic liquors, to import and sell such alcoholic liquors as may be required for medicinal, mechanical, manufacturing, and other purposes, not inconsistent with the provisions of this chapter; and such agent shall keep a list of the names of persons purchasing liquor, the quantity and description purchased by each person, and the purposes to which such liquor is intended to be applied, and shall receive such compensation for his services, and shall conform to such other regulations for the importation and sale of such liquors, and shall also be liable to such penalty for neglect or violation of duty, as the court of sessions appointing him shall prescribe. No such agent shall have any interest in such liquors, nor in the profits of the sale thereof.

Agents to keep lists, &c.

Penalties.

Railway commissioner may seize liquors on railway.

38. It shall be lawful for the chief commissioner of railways, or any person authorized by him, to seize and destroy all intoxicating liquors found exposed or intended for sale within the limits of the railway, and for that purpose, if necessary, upon reasonable ground of suspicion, forcibly to enter into any house or building within such limits, and to seize and take away all such intoxicating liquors.

No license granted within railway limits or gold district.

39. No licenses shall be granted to any person who shall reside or have his place of business within the limits of the railway, nor to any person who shall reside or have his occupation within any proclaimed gold district, and all sales of intoxicating liquors within such limits, or within such proclaimed gold districts, shall be deemed as made without license, notwithstanding the seller may hold a license, and he shall be liable to all penalties and forfeitures incurred by those who sell without license.

SCHEDULE.

A.

County of ———

License office.

Tavern license.

License is hereby granted to ———, of ———, in the county of ———, to sell and retail in a tavern, to be kept in the house in which he dwells, situate [*here describe particularly the situation of the premises,*] intoxicating liquors conformably to law.

This license to remain in force until ——— day of ——— next, subject to forfeiture for breach of the law.

Given under my hand as clerk of the licenses for the said county, this ——— day of ———, A. D. 18—.

A. B., clerk of the license.

By order of the sessions, security having been given as required by law.

County of ———

CHAP. 19.

License office.

Shop license.

License is hereby granted to ———, of ———, in the county of ———, to sell in a shop to be kept in the building occupied by him, situate [*here describe particularly the situation of the premises,*] intoxicating liquors in quantities not less than one gallon, but no part whereof shall be consumed on the premises.

This license to remain in force until the ——— day of ———, subject to forfeiture for breach of the law.

Given under my hand as clerk of the licenses for the said county, this ——— day of ———, A. D. 18—.

A. B., clerk of the license.

By order of the sessions, security having been given according to law.

County of ———

License office.

General license.

Whereas a tavern license dated the ——— day of ——— in the year 18—, has been granted unto ——— of ———, in the county of ———; and whereas the sessions for such county have also ordered a general license to be granted to the said ———, license is hereby granted to him to vend goods in his tavern during the continuance of his tavern license.

Given under my hand as clerk of the licenses for the said county, this ——— day of ——— A. D. 18—.

A. B., clerk of the license.

By order of the sessions.

C. D., clerk of the peace.

County of ———

License office.

General license.

Whereas a shop license dated the ——— day of ———, A. D. 18—, has been granted unto ——— of ———, in the county of ———; and whereas the sessions for such county have also ordered a general license to be granted to the said ———, license is hereby granted to him during the continuance of his shop license, to sell by retail any quantity of intoxicating liquors, to be used in the shop in such shop license described.

Given under my hand as clerk of licenses for said county, this ——— day of ——— A. D. 18—.

A. B., clerk of licenses.

By order of the sessions.

C. D., clerk of the peace.

B.

Know all men by these presents that we, ——— ———, are held and firmly bound with our sovereign lady queen Victoria, her heirs and successors, in the sum of two hun-

CHAP. 19. dred dollars of lawful money of Nova Scotia, to which payment we jointly and severally bind ourselves, our heirs, executors, and administrators, by these presents, sealed with our seals, and dated the — day of —, A. D., 18—.

Whereas the above bounden —, has been granted a license for the sale by retail of intoxicating liquors in the tavern [*or in the shop*] kept by the said —, in—. Now the condition of this obligation is such, that if the said — shall in all respects conform to the laws in force respecting the retail of intoxicating liquors and connected with such license, then this obligation to be void, otherwise to remain in full force and effect.

Signed, sealed and delivered }
in the presence of —. } (seal.)

C.

To any of the constables of — :

You are hereby commanded to summon A. B. of —, in the county of —, to appear before us at —, on the — day of —, ^{at office in the morning} to answer to the suit of C. D., clerk of the license for the county of —, [*if the suit be brought in his name,*] for selling intoxicating liquors to —, within — previous to the issuing hereof; contrary to law.

Witness our hands and seals at —, the — day of —, A. D. 18—.

E. F., J. P. (seal.)

G. H., J. P. (seal.)

D.

Act of 1865
11. Affidavit
in imprisonment
fine costs
said but not
in 3 Nov.
The within named defendant having been duly summoned as mentioned in the annexed writ of summons, was this day convicted of the offence of violating the license laws by selling intoxicating liquors without license, [*or other offence as the case may be, specifying whether it is for the first, second, third, or fourth offence, and stating the amount of penalty and costs, or upon default, or upon the oath of G. H., as the case may be, stating the manner of the party's conviction, and the names of the witnesses who may have been examined.*]

Witness our hands this — day of —, A. D. 18—.

C. D., J. P.

E. F., J. P.

E.

Know all men by these presents that we — and —, are held and firmly bound unto her majesty queen Victoria, her heirs and successors, in the sum of — of lawful money of Nova Scotia, to which payment we jointly and severally bind ourselves, our heirs, executors and administrators, by these presents, sealed with our seals, and dated the — day of —, A. D. 18—.

The condition of the foregoing obligation is such that CHAP. 20.
 if the above bounden [*party convicted*] shall prosecute an appeal from a judgment given against him for a violation of the license laws by ———, a justice [*or justices*] of the peace for the county of ———, on the ——— day of ———, and shall pay all fines, penalties and costs that may be awarded against him upon the final disposition of such suit, and also if the said ——— shall not during the pendency of such appeal, violate any provisions of the laws respecting licenses for the sale of intoxicating liquors, then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered }
 in the presence of ———. } (seal.)

F.

To any of the constables for the county of ———:

Whereas A. B., of ———, was this day convicted before us, the undersigned, two of her majesty's justices of the peace for the county of ———, of the offence of violating the license laws, [*here state the offence as in the conviction,*] these are therefore to command and require you forthwith to levy on the goods and chattels of the said A. B., to be found within your precinct, the sum of ——— dollars for penalty and ——— dollars for costs of suit, and for want of goods and chattels of the said A. B., we command you that you take the body of the said A. B., and him commit into our jail in ———, there to remain until discharged by due course of law. Whereof fail not, and make due return of this writ with your doings thereon to us within ——— days.

Witness our hands and seals this ——— day of ———,
 A. D., 18—.

E. F. (seal.)

G. H. (seal.)

TITLE IV.

CHAPTER 20.

OF THE POST OFFICE.

1. The exclusive right of establishing posts and of conveying letters and collecting postage within the province, and the power and authority heretofore vested in the lords of her majesty's treasury by virtue of the acts of the imperial parliament passed in such behalf to order and

Governor in
 council to con-
 trol post office.

CHAP. 20. establish rates of postage herein, are hereby vested in the governor and council.

May appoint officers and establish posts.

2. The governor in council may establish, alter, discontinue or extend any posts or post communication, or post offices, and may appoint, suspend or remove the postmaster general, and all or any postmasters, officers, deputies, agents and servants connected therewith.

Postmaster general and postmasters to give bonds.

3. The postmaster general shall give bond in the sum of four thousand dollars, with two sureties in the sum of two thousand dollars each, and postmasters shall give bond in such sum and with such sureties as may be directed by the governor in council.

Governor in council may make orders.

4. The governor in council may make such orders in conformity with this chapter as may be necessary for carrying out the same and promoting the objects thereof, and for avoiding as far as practicable the transmission of mails on the sabbath, and all such orders shall be valid as if in this chapter contained; but no higher penalty than four hundred dollars shall be imposed by any such order in council for the violation thereof.

Publication of orders.

5. Every such order in council shall be published in the royal gazette, and the rates of postage then established shall be demanded and taken immediately after such publication; and every such order, within eight days after it is made, shall be laid before the legislature if then sitting, or otherwise within fourteen days after it shall meet.

Rates of postage how regulated.

6. In conformity with the agreements made between the local governments of British North America, the provincial postage on letters and packets, not being newspapers or printed pamphlets, magazines or books, entitled to pass at the lower rates hereinafter referred to, shall not exceed the rate of five cents per half ounce for any distance within the province; and the increase of charge on letters weighing over an half an ounce shall be regulated according to the following scale:—No transit postage shall be charged on any letter or packet passing through the province to any other colony in British North America unless it be posted in this province and the sender choose to prepay it, nor any letter nor packet from any such colony if prepaid there; and the rate of *twopence* sterling the half ounce shall remain in operation as regards letters by British mails, to be extended to countries having postal communication with the united kingdom, unless her majesty's government shall see fit to alter the rate thereon to be charged to five cents. Letters mailed at any office in this province for delivery within the county in which the post office is situated shall if prepaid by stamp be liable to a charge of two cents per half ounce.

County postage

Unpaid letters, rate for.

7. The postage on all letters posted in Nova Scotia to be delivered within the province and not prepaid, shall be seven cents per each half ounce, payable on delivery.

8. Letters mailed at Halifax to be forwarded by packet to the United States shall be charged at a rate of ten cents, which shall be prepaid by stamp, of which rate one cent and a half shall belong to the Nova Scotia office.

CHAP. 20.

Packet letters,
U. S. rate for.

9. Letters mailed at Halifax for Bermuda or Newfoundland shall be charged with a rate of ten cents per half ounce to be prepaid by stamp, of which one cent and a half shall belong to the Nova Scotia office.

Bermuda, New-
foundland, &c.,
rate.

10. British and colonial newspapers and small religious periodicals, such as the British workman, penny post, child's paper, the play hour, the sabbath school visitor, and others of a like description, whether British or foreign, shall pass through the Nova Scotia post office whether posted within or without the province, free of charge for Nova Scotia postage.

What news-
papers free.

11. All other newspapers passing through the post office shall be liable to a charge of one cent each. If mailed within the province, such postage must be prepaid by stamp; if mailed without, for delivery within the province, the postage shall be collected on delivery.

Rate for other
newspapers.

12. One copy to be called an exchange copy of any newspaper, which under the next preceding clause would be liable to postage, shall nevertheless, if addressed to a newspaper publisher in Nova Scotia, pass free of Nova Scotia postage.

Exchange
papers.

13. Printed books may be transmitted through this province at the rate of one cent per ounce up to forty-eight ounces, beyond which no weight in book shall be transmitted by post in this manner.

Book postage
in province.

14. Printed books, magazines, reviews, or pamphlets, binding rollers for prints or maps not exceeding two feet in length, markers and everything appertaining to such publications, may be sent through the post between Nova Scotia and the United Kingdom, and also between Nova Scotia, Newfoundland, and Bermuda and British West Indies, at the following rates of postage:—for a single volume not exceeding one quarter of a pound in weight, three pence sterling; exceeding one quarter of a pound and not exceeding one half of a pound, six pence sterling; exceeding one half pound and not exceeding one pound, one shilling sterling; and so on adding one shilling sterling for every additional pound or a fraction of a pound.

Book postage
elsewhere.

15. Periodicals passing through any office in this province, except those published in the province and agricultural reports, which shall go free, shall be liable in addition to any charge prepaid on posting to an additional charge on delivery of two cents for each number. If posted within the province for delivery within or without the province they shall be liable to a charge of two cents each, to be prepaid by stamp; but the governor in council may by

Periodicals.

CHAP. 20. order, alter, modify, and reduce the rates of postage on such periodicals as they may think proper.

Parcel postage.

16. Parcels closed at the ends or sides may be sent by post in Nova Scotia at the following rates, which must be prepaid by stamp: if weighing less than one half of a pound, twelve and a half cents; more than one half of a pound but less than one pound, twenty-five cents; more than one pound and not exceeding two pounds, fifty cents, more than two pounds but not exceeding three pounds, seventy-five cents; beyond which weight no parcel can be forwarded by post. The size of the parcel not to exceed one foot in length or breadth, and six inches in thickness.

Postage retained where received.

17. All provincial postage received within this province shall be retained as belonging to it, and all provincial postage received within any other of the British North American colonies may be retained as belonging to such colony.

British packet postage, &c.

18. The British packet postage and other British postage collected in this province, shall be accounted for and paid over to the proper authorities in the united kingdom; but the colonial postage on the same letters or packets shall belong to the colony collecting it, or if prepaid to the British post office it shall be credited and belong to the colony to which such letters or packets are addressed.

Franking privilege abolished.

19. No privilege of franking shall be allowed as regards provincial postage.

Stamps.

20. Provincial stamps for the prepayment of postage may be prepared, issued and sold, under the orders of the governor in council; and such stamps prepared, issued and sold, under the directions of the proper authorities in the other British North American colonies, shall be allowed in this province as evidence of the prepayment of provincial postage in such colonies respectively on the letters or packets to which they are affixed.

U. S. packet postage, how disposed of.

21. The packet postage for letters to the united kingdom, shall be six pence sterling the half ounce; five pence of which shall belong to the English post office and one penny to the Nova Scotia office.

Packet postage paid half yearly other postage quarterly.

22. All monies received on account of packet postage shall be carried to a separate account by the postmaster general, and the same shall be remitted by the governor not less than twice in every year to the postmaster general in England; and all other monies received by the postmaster general in this province, shall be paid by him at the end of every quarter to the receiver general, and he also shall return to the office of the financial secretary at the end of every quarter a quarterly account of the whole revenue received by him.

Express mail.

23. •The rate of remuneration by the transport of British mails by express through this province to or from New Brunswick, Canada, and Prince Edward Island, shall be

paid from time to time by agreement to be made between CHAP. 20.
the government of this province and the other provinces
or governments concerned.

24. If it shall appear to the local governments or proper authorities of the other provinces and of the united kingdom, and to the governor in council, that the foregoing conditions and provisions are not in accordance with the arrangements so made and agreed upon with the other colonies, then the governor in council may alter and modify such conditions and provisions so as to carry out and complete such arrangement.

Agreement
may be modi-
fied.

25. All papers ordered to be printed by either house of parliament or by her majesty's command, or by the legislative council or house of assembly of this province, or by virtue of an address of the legislative council or assembly, shall be transmitted by post within this province free of postage.

Government
and parlia-
mentary print-
ed matter free.

26. No printed paper, whether newspaper, book, pamphlet or other paper, permitted by this chapter to be sent by post, shall be transmitted either free or at a reduced rate of postage, unless the following conditions shall be observed; first, it shall be sent without a cover, or in a cover open at the sides or ends; second, there shall be no words or communication printed on the paper after its publication or upon the cover thereof, nor any writing or marks upon it, or upon the cover of it, except the name and address of the sender and of the person to whom it is sent; third, there shall be no paper or thing enclosed in it or with any such paper or publication.

Conditions of
forwarding
printed papers.

27. The postmaster general or any of his officers may examine any printed paper or packet which shall be sent by the post, either without or with a cover, open at the sides or ends in order to discover whether it is contrary in any respect to the conditions hereby required to be observed, and in any case if the required conditions be not fulfilled the whole of every such paper shall be charged with postage as a letter; and as to every such printed paper going out of the province the postmaster general may either detain the same or forward it by post charged with letter postage.

Letter postage
chargeable if
conditions not
complied with.

28. In all cases where a question shall arise whether a printed paper is entitled to the privileges of a newspaper or other publication as regards its transmission by post under this chapter, the question shall be referred to the postmaster general, whose decision with the concurrence of the governor in council shall be final.

Questions of
postage on
printed papers,
how decided.

29. If any printed newspaper or other printed paper, privileged to go by post and brought into this province, shall be directed to a person who shall have removed from the place to which it is directed before the delivery thereof at that place, it may, provided it shall not have opened, be

Removal of
parties, how
newspapers for-
warded.

CHAP. 20. re-directed and forwarded by post to such person at any other place within this province free of charge for such extra conveyance.

Ship postage.

30. For encouraging masters of vessels, not being post office packets, to undertake the conveyance of letters between places beyond the British North American colonies and this province, and for regulating the conveyance and delivering of such letters, the postmaster general may allow to the masters two and a half cents for each letter they shall deliver to the post office at the first port they touch or arrive at in this province, or with which they shall communicate when inward bound, and if from unforeseen circumstances the master cannot, upon delivering his letters at an outport, receive the money to which he is entitled, he shall be paid by means of an order upon the postmaster general at such other place as may be convenient, and every master of a vessel inward bound shall, at the port or place of arrival, sign a declaration in the presence of the person authorized to take the same at such port or place, who shall also sign the same, and the declaration shall be in the form or to the effect following :

I, A. B., commander [*state the name of the ship or vessel*] arrived from, [*state the place*] do as required by the post office laws, solemnly declare that I have to the best of my knowledge and belief, delivered or cause to be delivered at the post office, every letter, letter bag, package, or parcel of letters that was on board the [*state the name of the ship*] except such letters as are exempted by such laws.

Ship letters,
how delivered,
&c.

31. No officer of the colonial revenue shall permit such vessel to enter or report until such declaration shall be made and produced, and no vessel shall be permitted to break bulk or make entry in this province until all letters on board the same shall be delivered at the post office where posts may be established, except such letters as are exempted by this chapter, and also except all such letters as shall be brought by a vessel liable to the performance of quarantine; all which last mentioned letters shall be delivered by the persons having possession thereof to the persons appointed to superintend the quarantine that all proper precautions may be by them taken before the delivery thereof, and when due care has been had therein such letters shall be by them despatched in the usual manner by post; and the officers of the colonial revenue at every port or place in this province shall search every vessel for letters which may be on board contrary to this chapter, and may seize all such letters and forward them to the nearest post office, and the officer who shall so seize and send them shall be entitled to a moiety of the penalties which may be recovered for any such offence; and the postmaster general may appoint agents to demand

from the masters of vessels arriving in this province, all letters on board the same and not exempted by this chapter, and the master of any such vessel shall forthwith deliver all letters on board to such person on his demanding the same. CHAP. 20.

32. The postmaster general, with the approbation of the governor in council, may establish way offices over and above the regular post offices, and every person employed at a way office shall be liable to all the penalties imposed by this chapter on postmasters and other officers of the post office; and may also provide in suitable and convenient places within the city of Halifax, receiving offices where letters prepaid by stamps and newspapers and matter not liable to postage, or postage prepaid by stamps, may be mailed, and a local courier or couriers daily at hours publicly notified shall convey the same to the general post office, preparatory to being mailed. Way offices, how established.
Receiving offices, Halifax city.

33. The postmaster general, with the concurrence of the governor in council, may enter into an agreement with and take security from any person applying to him to extend the accommodations of the post to any place, for indemnifying the revenue against the expenses which shall be incurred thereby beyond the amount of postages received. Extension of post, how provided.

34. The governor in council may enter into arrangements or conventional agreements with any other of the North American colonies, or with any foreign country, for the transmission of colonial or foreign newspapers or other printed papers within or through this province, upon such terms and conditions as shall be reasonable, and may carry out such arrangements or conventional agreements by orders in council, duly published as herein directed. Agreements for transmission of newspapers.

35. The postage marks, whether British, foreign, or colonial, on any letter brought into this province, shall in all courts of justice and elsewhere be received as conclusive evidence of the amount of British, foreign or colonial postage, payable in respect of such letter, in addition to any other postage chargeable thereon, and all such postage shall be recoverable in this province as postage due to her majesty. Postage marks evidence.

36. No postmaster general nor any officer of the post office throughout the province, nor any courier, shall be compelled to serve on any jury or inquest, or in the militia, or as town or city officer. Officers exempt from public duty.

37. If any person employed to convey or deliver a post letter bag, or a post letter, shall, whilst so employed, or whilst the same be in his custody or possession, leave a post letter bag or a post letter, or if any such person shall be guilty of an act of drunkenness or of negligence, or other misconduct, whereby the safety of a post letter bag or a post letter shall be endangered, or shall collect, Misconduct, how punished.

CHAP. 20. receive, convey or deliver a letter otherwise than in the ordinary course of the post, or shall give any false information of an attempt at robbery upon him, or shall loiter on the road or passage, or wilfully mis-spend his time so as to delay the progress or arrival of a post letter bag or a post letter, or shall not use proper care and diligence safely to convey the post letter bag or a post letter at the rate of speed appointed by and according to the regulations of the post office for the time being, he shall forfeit a sum not exceeding forty dollars.

Abettors
punished.

38. Whoever shall abet or procure the commission of an offence, which is by this chapter punishable on summary conviction, shall be liable to the same forfeiture or punishment to which a principal offender is by this chapter made liable.

Ferriage free.

39. No person in the employ of the post office travelling with a mail shall pay for passing or repassing a ferry, but the ferryman at every such ferry shall forthwith convey over such person travelling with a mail without payment for the same on pain of forfeiting for every offence twenty dollars.

Letters for-
warded only by
mail.

40. Subject always to the provisions and regulations hereinbefore contained, the postmaster general shall have the exclusive privilege of conveying, receiving, collecting, sending and delivering letters within this province; and any person who shall, except in the cases hereinafter excepted, collect, send, convey or deliver or undertake to convey or deliver any letter within this province, or who shall receive or have in his possession any letter for the purpose of conveying or delivering it otherwise than in conformity with this chapter, shall for every letter so unlawfully conveyed or undertaken to be conveyed, or received, delivered or found in his possession, incur a penalty of one dollar; but such exclusive privilege, prohibition and penalty, shall not apply to—

Penalty.

Exceptions.

Letters sent by private individuals to be mailed in the first way or post office:

Letters sent by a messenger on purpose concerning the private affairs of the sender or receiver:

Letters addressed to a place out of the province and sent by sea and by a private vessel not being a packet boat:

Letters lawfully brought into this province and immediately posted at the nearest post office:

Letters of merchants, owners of merchants' vessels, or of the cargo or loading therein sent by such vessels or by any person employed by such owners for the carriage of such letters according to their respective addresses, and delivered to the persons to whom they are respectively addressed without pay or advantage for so doing.

Letters concerning goods sent by common known

carriers to be delivered with the goods to which such letters relate, without reward or advantage for receiving or delivering them. CHAP. 20.

Provided that nothing herein contained shall authorize any person to collect any such excepted letters for the purpose of conveying or sending them as hereinbefore mentioned, and that way letters prepaid may be delivered by the officer to the courier, to be dropped along the route at convenient places; and provided also that nothing in this chapter shall oblige any person to send any pamphlet, printed book, or newspaper by post. Proviso.

41. It shall be lawful for any person, and it shall be the duty of the officer or person employed in the post office, or in the collection of the revenue, to seize any letters conveyed, received, collected, sent, or delivered in contravention of this chapter, and to take them to the nearest post office, and to give such information as he may be able to give to the postmaster for the effectual prosecution of the offenders, and the letters moreover shall be charged with letter postage. Letters sent illegally, seizable.

42. As well the colonial, British or foreign, as the provincial postage on any letter or packet, shall, if not prepaid, be payable to the postmaster general by the party to whom the same shall be addressed, or who may lawfully receive such letter or packet, and any refusal or neglect to pay such postage shall be held to be a refusal to receive such letter or packet, which shall be detained and dealt with accordingly; but if the same be delivered the postage on it shall be charged against and paid by the postmaster delivering it, saving his right to recover it from the party by whom it was due as money paid for such party; and if any letter or packet be refused, or if the party to whom it is addressed cannot be found, then such postage shall be recoverable by the postmaster general from the sender of such letter or packet, and the postage marked on any letter or packet shall be held to be the true postage due thereon, and the party signing or addressing it shall be held to be the sender until the contrary be shewn; and all postage may be recovered with costs by civil action in any court having jurisdiction to the amount. Postage, how and to whom payable.

43. Subject to the provisions of this chapter, and to the orders made under it and the instructions he may receive from the governor, the postmaster general shall have power to open and close post offices and mail routes, to suspend any postmaster or other officer or servant of the department until the pleasure of the governor be known, and to appoint a person to act in the meantime in the place of such officer or servant; to enter into and enforce all contracts relating to the conveyance of the mails, the local accommodation of the department, and other matters P. M. General, powers and duties of.

CHAP. 20. connected with the business thereof, and to make rules and orders for the conduct and management of the business and affairs of the department, and for the guidance and government of the officers and servants thereof in the performance of their duties; to sue for all sums due for postages or penalties under this chapter, by any postmaster, officer or servant of the department or his sureties; and all such powers may be lawfully exercised by him or by any postmaster, officer, servant or party whom he shall depute to exercise the same, or whose act in that behalf he shall approve, confirm or adopt; and every officer, servant or party employed in the post office shall, as regards the duties attached to the office held by him be deemed the deputy of such postmaster general; and all suits, proceedings, contracts and official acts to be brought, had, entered into and done by the postmaster general, may be so in and by his name of office, and may be continued, enforced and completed by his successors in office as effectually as by himself; nor shall the appointment or authority of any postmaster general, or of any postmaster, officer or servant of the post office, be liable to be traversed or called in question in any case except only by those who act for the crown.

Soldiers and
seamen's let-
ters privileged.

44. In every case in which any seamen in her majesty's navy, sergeant, corporal, drummer, trumpeter, fifer or private soldier in her majesty's service, or in the service of the East India company, shall be entitled to receive or send letters on the payment of a certain sum and no more in place of all British postage thereon; the payment of such sum shall likewise free such letter from all such provincial postage thereon; and the governor in council may make orders for giving effect to this section.

Property in
letters.

45. From the time any letter, packet, chattel, money or thing shall be deposited in the post office for the purpose of being sent by post, it shall cease to be the property of the sender, and shall be the property of the party to whom it is addressed or the legal representatives of such party.

Lost letters.

46. The postmaster general shall not be liable to any party for the loss of any letter or packet sent by post unless such loss shall have arisen from his own default.

Offences, pun-
ishment de-
fined.

47. To steal, embezzle, secrete or destroy any post letter shall be felony, punishable in the discretion of the court by imprisonment for not less than three nor more than fourteen years, unless such post letter shall contain any chattel, money or valuable security; in which case the offence shall be punishable by imprisonment for life, or for a period not less than five years.

To steal from or out of a post letter any chattel, money, or valuable security, shall be felony, punishable by imprisonment for life, or for a period not less than five years.

To steal a post letter bag or a post letter from a post letter bag, or a post letter from any post office, or from any way office, or from a mail, or to stop a mail with intent to rob or search the same, shall be felony, punishable by imprisonment for life, or for a period not less than five years. CHAP. 20.

To open unlawfully any post letter bag or unlawfully to take any letter out of such bag shall be felony, punishable by imprisonment for not less than one nor more than fourteen years.

To receive any post letter or post letter bag, or any chattel, money or valuable security, the stealing, taking, secreting, or embezzling whereof, is hereby made felony, knowing the same to have been feloniously stolen, taken, secreted, or embezzled, shall be felony, punishable by imprisonment for not more than five years; and the offender may be indicted either as an accessory after the fact or a substantive felony; and in the latter case, whether the principal felon hath or hath not been previously convicted or shall not be amenable to justice, and however such receiver shall be convicted, the offence shall be punishable as hereinbefore mentioned.

To forge, counterfeit, or imitate any postage stamp issued or used under the authority of this chapter, or by or under the authority of the government or proper authority of the united kingdom, or of any British possession or of a foreign country, or knowingly to use any such forged counterfeit or imitated stamp, or to engrave, cut or sink, or make any plate, die or other thing whereby to forge, counterfeit or imitate such stamp, or any part or portion thereof, except by the permission in writing of the postmaster general or of some officer or person who, under the orders to be made in that behalf, may lawfully grant such permission, or to have possession of any such die, plate or other thing without such permission, or to forge, counterfeit or unlawfully imitate, use or affix to or upon any letter or packet any stamp, signature, initials, or other mark or sign purporting that such letter or packet ought to pass free of postage or at a lower rate of postage, or that the postage thereon or any part thereof hath been pre-paid or ought to be paid by or charged to any person or department, shall be felony, punishable by imprisonment for life or for a period not less than five years.

To open unlawfully, or wilfully to keep, secrete, delay or retain or procure, or suffer to be unlawfully opened, kept, secreted or detained, any post letter bag or any post letter, or after payment or tender of the postage thereon, if payable to the party having possession of the same, to neglect or refuse to deliver up any post letter to the person to whom it shall be addressed, or who shall

CHAP. 20. be legally entitled to receive the same, shall be a misdemeanor.

To steal, or for any purpose to embezzle, secrete, destroy, wilfully detain or delay any printed vote or proceeding, newspaper, printed paper or book sent by post, shall be a misdemeanor.

To obstruct or wilfully delay the passing or progress of any mail, or of any animal or carriage employed in conveying any mail on any public highway, shall be a misdemeanor.

To endeavor to procure any person to commit any act hereby made or declared a felony or misdemeanor shall be a misdemeanor.

Every misdemeanor hereunder shall be punishable by fine or imprisonment or both in the discretion of the court, before whom the offender shall be convicted.

Every principal in the second degree, and every accessory before or after the fact to any felony hereunder, shall be guilty of felony and punishable as the principal in the first degree; and every person who shall abet or procure the commission of any such misdemeanor shall be guilty of a misdemeanor and punishable as a principal offender.

Any imprisonment awarded under this chapter shall be in the provincial penitentiary if for a term of or exceeding one year; and if the imprisonment awarded be for a less term it may be with or without hard labor in the discretion of the court awarding it.

Offender, how
prosecuted.

48. Any indictable offence against this chapter may be dealt with, indicted, and tried and punished, and laid and charged to have been committed, either in the county or place where the offence shall be committed, or in that in which the offender shall be apprehended or be in custody, as if actually committed therein; and where the offence shall be committed in upon or in respect of a mail, or upon a person engaged in the conveyance or delivery of a post letter bag, or post letter, or chattel, or money or valuable security sent by post, such offence may be dealt with and inquired of, tried and punished, and charged to have been committed, as well within the county or place in which the offender shall be apprehended or be in custody as in any county or place through any part whereof such mail person, post letter bag, post letter, chattel, money, or valuable security shall have passed in the course of conveyance and delivery by the post, in the same manner as if it had been actually committed in such county or place; and in all cases where the side or centre or other part of a highway, or the side, bank, centre or other part of a river or canal or navigable water, shall constitute the boundary between two counties or places, then to pass along the same shall be held to be a passing through both; and every accessory before or after the fact, if the offence be felony,

and every person abetting or procuring the commission of any offence, if the same be a misdemeanor, may be dealt with, indicted, tried and punished, as if he were a principal, and his offence may be laid and charged to have been committed in any county or place where the principal offence may be tried. CHAP. 20.

49. In every case where an offence shall be committed in respect of a post letter bag, or a post letter, packet, chattel, money or valuable security sent by post, it shall be lawful to lay in the indictment the property of such post letter bag, post letter, packet, chattel, money or valuable security sent by post, in the postmaster general, and it shall not be necessary to allege in the indictment, or to prove upon the trial or otherwise, that the post letter bag, post letter, packet, chattel or valuable security, was of any value; but except in the cases hereinbefore mentioned, the property of any chattel or thing used or employed in the service of the provincial post office, or of the monies arising from the duties of postage, shall be laid in her majesty, if the same be the property of her majesty, or if the loss thereof would be borne by the province and not by any party in his private capacity; and in any indictment against a person employed in the post office for an offence against this chapter, or in any indictment against a person for an offence committed in respect of some person so employed, it shall be sufficient to allege that such offender or other person was employed in the post office at the time of the commission of the offence, without stating further the nature or particulars of his employment.

Property, in whom and how laid; other allegations.

50. The postmaster general, subject always to the orders of the governor in council, may compromise and compound any suit or information which shall be commenced by his authority or under his control against any person for recovering a penalty incurred under this chapter, on such terms and conditions as he shall in his discretion think proper, with full power to him or any of the officers and persons acting under his orders to accept the penalty incurred or alleged to be incurred, or any part thereof, without suit or information brought for the recovery thereof.

Suits may be compounded.

51. All mere pecuniary penalties imposed by this chapter, or by any order of the governor in council, made under this chapter, shall be recoverable with costs by the postmaster general by civil action in any court having jurisdiction to the amount, and shall belong to the province, saving always the power of the governor in council to allow any part or the whole of such penalty to the officer or party by whose information or intervention the same shall have been recovered; but all such penalties shall be sued for within one year after they are incurred, and not afterwards; provided always that, if the penalty

Pecuniary penalties, how recovered.

CHAP. 20. exceed eighty dollars, the offender may be indicted for a misdemeanor in contravening the provisions of this chapter or of the regulations made under it, instead of being sued for such penalty, and if convicted shall be punished by fine or imprisonment, or both, in the discretion of the court.

Competency of witnesses.

52. In action or proceeding for the recovery of postage, or of any penalty under this chapter, any postmaster or other officer or servant of the post office, shall be a competent witness, although he may be entitled to entertain reasonable expectation of receiving some portion or whole of the sum to be recovered, and the burden of shewing that anything proved to have been done by the defendant was done in conformity to or without contravention of this chapter shall be on the defendant.

Burden of proof

Salaries.

53. Postmasters and way office keepers shall receive the several sums now agreed to be paid to them as salaries.

Definition of terms.

54. The words "postmaster general" and "post office" when used in this chapter, shall mean the provincial postmaster general and provincial post office, unless otherwise expressed.

Money order system.

55. The governor in council may make orders and regulations for providing, when it deems it expedient, means:—

First—For avoiding the risk of transmitting small sums of money through the post by establishing a system of money orders to be granted by one postmaster or officer of the department on another and fixing the terms on which such orders may be obtained.

Second—For sanctioning and enforcing the arrangements already made and established in this province for that purpose.

Third—For extending the money order system so as to include the granting of money orders on postmasters in the united kingdom and the British provinces of North America, and the payment of money orders drawn by such postmasters on postmasters in this province on such terms and conditions as he may deem expedient.

Fourth—For rendering the money order system available for the transmission from Halifax to the shiretown of each county and from shiretowns to Halifax of all monies connected with the service of roads, of education, of the collection of the revenue, and of other branches of the public service, required to be transmitted to or from such shiretown, to or from Halifax, and for taking securities from the various officers employed in such transmission in respect thereof, and generally to make such regulations as he deems necessary for the due and effective working of the post and postal business and arrangements, and for carrying into effect the provisions of this chapter; and any such order and regulation may from time to time be

repealed or amended by any subsequent order or regulation made in like manner; and any such order or regulation shall, until it be otherwise ordered by any subsequent regulation, have force and effect as if it formed part of the provisions of this chapter. Any bond or security required or authorized by this chapter or by any such regulation, or by any order of the governor in council in any matter relating to the provincial post office or to the money order system, shall be valid, and may be enforced according to its tenor and effect on the breach of the condition thereof.

TITLE V.

OF PUBLIC BUILDINGS, ESTABLISHMENTS, AND RECORDS.

CHAPTER 21.

OF THE BOARD OF WORKS.

1. The board of works is and shall be composed of a chairman and two other members appointed, and to be appointed as occasion may require by the governor in council to hold office during pleasure; and all acts by them heretofore done in the exercise of their functions as such board are declared legal and valid. The salary of the chairman shall not exceed sixteen hundred dollars; the legal title to and the superintendence and management of the provincial building and grounds; the provincial penitentiary and grounds; the hospital for the insane and grounds; and all other buildings and property belonging to the province, and now under the care or management of the board of works, or which may be placed by the provincial government under their care, with all the light houses, buoys and beacons erected or to be erected within this province, and also Sable Island and the Seal and Mud Islands and the several provincial establishments for humane objects, is, are and shall be vested in and exercised by the board of works; and for the purposes of this act the board of works is and shall be a body corporate with perpetual succession.

Composition of board of works.

Acts legalized.

Salary of chairman.

Title and management of property.

Board of works body corporate.

2. The governor in council may make such regulations for the superintendence and management of the public works mentioned in the first section of this chapter as may seem judicious, provided that no greater expense is incurred for such superintendence and management than has

Governor in council may make regulations.

CHAP. 21. been heretofore sanctioned or granted by the legislature—such regulations to be laid before the legislative council and assembly within ten days of the opening of the next session after they shall be made, and they shall be subject to the revision of the legislature.

Lands, how
obtained,

3. Lands required by the provincial government for the erection of light houses, beacons and other uses for the protection of navigation and for roads leading thereto, and for buildings and other necessary purposes connected therewith, may by order of the board of works be laid off and appropriated to the public service for such uses; whereon a plan or other appropriate description of the lands shall be filed in the office of the board, and an order of appropriation in which the lands shall be adequately designated shall be entered in their books—a copy of which order, certified under the seal of the board and the signature of the chairman, or in his absence a member of the board, shall be entered in the registry of deeds of each county in which the lands may lie. Immediately on the order of appropriation being passed by the board, the lands shall vest in the board and may thenceforth be used for the purposes required. The board may agree with the owners or persons entitled upon the value of the land or of their interests therein. In case of disagreement, the value shall be ascertained by the award of three arbitrators—one to be named by the board, one by the proprietors, and one by the custos of the county or district where the lands lie. Their award shall be returned to the court of sessions of the county in which the lands or any part of them lie, which may hear evidence, and confirm, modify or disallow the award in whole or in part. Either party may appeal to the supreme court which may hear evidence and confirm or modify or disallow the award and the order of the sessions in whole or in part; and the judgment of the supreme court shall be final. If by the judgment of the sessions not appealed from, or of the supreme court, the award shall be set aside, a new arbitration shall take place in the manner and with the incidents of the first.

Value, how
ascertained.

Appeal.

Clerk of board.

Superintendent
of lights, &c.

4. The board has and shall continue to have a clerk, whose salary shall not exceed eight hundred dollars. There is and shall continue to be a superintendent of light houses and humane establishments, whose salary shall not exceed one thousand dollars. His duty under the board shall be to visit the light houses and humane establishments, but he shall be subject to the general direction of the board and shall render them such assistance and perform such duties as the board may from time to time require. He shall report to the board for the information of the government and legislature, the condition of the humane establishments, light houses, and offer suggestions for correcting abuses and effecting improve-

ments. There is and shall be a clerk of works under the CHAP. 22.
 general direction of the board, whose salary shall not Clerk of works.
 exceed eight hundred dollars.

5. An account of all payments, expenditures, and ex- Accounts, how
 kept and
 money drawn.
 penses incurred by the board under this chapter, shall be
 kept by the clerk of the board, and the amount necessary
 for that purpose shall be drawn by the board from time to
 time by warrant on the receiver general, under certificate
 of the financial secretary, and all such accounts shall be
 annually presented to the assembly, and be audited along
 with the other public accounts.

CHAPTER 22.

OF THE PENITENTIARY.

1. The provincial penitentiary shall be used as a prison Penitentiary &
 prison.
 for offenders as hereinafter specified.

2. If any officer on being dismissed shall not quit the Mode of re-
 moving dis-
 missed officers.
 penitentiary and give up possession of any building or
 apartment belonging thereto within a period to be fixed
 by the board of works, any justice of the peace shall, on
 application of the board, by warrant, direct the sheriff to
 remove such person out of the penitentiary, or any build-
 ing or apartment belonging thereto, in like manner as
 upon a writ of *habere facias possessionem*.

3. The board shall have the same powers with respect Board may
 make rules for
 management.
 to the penitentiary which the visiting justices of any
 prison in England have, or so much thereof as the gover-
 nor in council may confer, and may hold meetings and
 make rules for the government of the penitentiary, for
 the duties and conduct of the principal keeper and other
 officers thereof, and for the maintenance, employment and
 discipline of the convicts; such rules shall be printed and
 kept in a public book by the principal officer of the peni-
 tentiary. No rules or alteration or revocation of former
 rules shall be in force until approved by the governor
 in council.

4. The board shall appoint one or more of their num- Appointment of
 visitors; their
 powers.
 ber from time to time to visit the penitentiary, and may
 delegate to such visitors powers to make any order requi-
 site in cases of pressing emergency; every such order
 shall be in writing, and shall be reported with the circum-
 stances to the board at their next meeting.

5. The board may contract for the clothing, diet, and Maintenance of
 convicts, their
 employment.
 other necessities for the maintenance of the convicts, and

CHAP. 22. for the implements or materials for any manufacture or trade in which convicts shall be employed, and may carry on such manufactures or trade and sell the goods manufactured.

Report of board
to be laid before
legislature
annually.

6. The board shall, on or before the tenth day of January in each year, and oftener if required by the governor in council, report to him in writing under the hands of three or more of them, the state of the buildings, the behaviour of the officers and of the convicts, the amount of the earnings of the convicts, and the expense of the penitentiary and such other matters relating to the management of the prison as they shall deem expedient, or as the governor in council shall direct, and such report shall be laid before the legislature within one month, if the general assembly be then sitting; if not, then within fourteen days after its next meeting.

Convicts, how
removed and
received.

7. The governor may direct the removal to the penitentiary of any convict under sentence of the supreme court, who having been examined by a medical practitioner shall appear free from any putrid or infectious disease and fit to be removed from the place of his confinement. The person having the custody of such convict shall, on the receipt of the order of removal, convey him to the penitentiary; and if, on the examination by the medical officer there, he shall appear fit to be admitted, shall deliver him into the custody of the principal keeper, with an attested copy of the order of the court containing the sentence by virtue of which such convict shall be in custody, and also a certificate specifying such particulars concerning such convict as the governor may direct. The principal keeper shall give a receipt in writing to every such person for every convict received into his custody, and all reasonable expenses of such removal shall be paid by the county in which the offender shall have been convicted.

Convicts must
undergo medi-
cal examina-
tion.

8. When any convict ordered to be confined in the penitentiary shall be brought thither, he shall continue in the custody of the person who shall bring him until he has been examined by the medical officer, and ascertained to be fit for admission into the penitentiary; and if the medical officer shall certify that he is not fit to be received there he shall be placed in some hospital until restored to health, when he shall be moved to the penitentiary.

Sick convicts,
how dis-
charged.

9. No convict received into the custody of the principal keeper shall be discharged at the end or other determination of his term if he shall then labor under any acute or dangerous disease, unless at his own request; and when any such convict shall be finally discharged such clothing and assistance, in money or otherwise, as the board shall judge proper, shall be given him.

Employing of
convicts, how
regulated.

10. The convicts shall be employed in work according to their capacity and ability, and in such trades as they

according to their capacity and ability, and in such trades CHAP. 22.
as they may be best fitted for, every day in the year except
Sundays, Christmas Day, Good Friday, and any day
appointed for a general fast or thanksgiving, so many
hours, not exceeding twelve, exclusive of the time allowed
for meals and exercise as the board shall order; but they
may by a written order allow any convict at his own
request to labor for a longer time.

11. No person except the members of the board or Admission of
persons re-
stricted.
servants of the penitentiary, or persons authorized by the
rules made by the board, shall be allowed at any time to
enter any part of the penitentiary used by the prisoners,
or to converse or hold communication with them.

12. The principal keeper, or person under him, having Principal keep-
er, his powers.
the custody of the convicts, shall, during the term for which
they shall be ordered to remain in custody, have the same
powers over them as are incident to the office of sheriff or
jailor, and in case of any misbehaviour or negligence in
the discharge of his office shall be liable to the same pun-
ishment to which a jailor is now liable.

13. If any convict shall assault the principal keeper or Punishment of
convicts.
any officer or servant employed in the penitentiary, the
board may order him to be prosecuted therefor, and upon
conviction he shall be imprisoned for any term not exceed-
ing two years, in addition to the term for which he was in
the first instance confined.

14. The governor may at any time order any convict to Incorrigible
convicts, remo-
val of.
be removed from the penitentiary as incorrigible to any
other prison or place of confinement in which he may be
lawfully imprisoned.

15. If any convict shall be found insane during his Insane con-
victs, how
treated.
confinement, and be so reported by the board to the
governor, he may by warrant order such convict's imme-
diate removal to such lunatic asylum as he may judge
proper; every convict so removed shall remain under
confinement in such asylum until it shall be certified to
the governor by the medical superintendent of the asylum
or by two physicians or surgeons, that such convict has
become of sound mind. If the term of his imprisonment
shall not then have expired, the governor may order that
such convict be remanded to the penitentiary. If the
period of his imprisonment shall have expired, he shall be
discharged.

16. Every convict who during the term of his im- Escape, &c.,
how punished.
prisonment in the penitentiary shall break prison, or who
while being conveyed to prison shall escape, shall be
punished by an addition not exceeding three years to the
term of his imprisonment. If afterwards convicted of a
second escape or breach of prison, he shall be guilty of
felony; and every convict who, during the term of his
imprisonment, shall attempt to break prison, or who shall

CHAP. 22. forcibly break out of his cell, or make any breach therein with intent to escape therefrom, shall be punished by an addition, not exceeding twelve months, to the term of his imprisonment, by the order and direction of the governor in council.

Rescue, &c.,
how punished.

17. Any person rescuing a convict from the penitentiary, or from the person conveying him thither, or aiding in his rescue, shall be guilty of felony; and every person having the charge of a convict, or employed as a keeper or assistant, who shall wilfully allow such convict to escape, or assist him in an attempt to escape, though no escape be actually made, and any person attempting to rescue any convict, or aiding in such attempt, though no rescue be actually made, shall be guilty of felony; and every person having such custody carelessly allowing any such convict to escape shall be guilty of a misdemeanor, and being convicted thereof shall be liable to fine or imprisonment, or both, at the discretion of the court.

Subordinate of-
ficers punished
for misconduct.

18. Every officer or servant of the penitentiary bringing or carrying out, or endeavoring to bring or carry out, or allowing to be brought or carried out, to or for any convict, money or any article not allowed by the rules of the penitentiary, shall be forthwith suspended by the principal keeper, who shall report the offence to the board at their next meeting, and the board shall enquire thereof upon oath, which any one of them may administer, and upon proof of the offence shall dismiss such officer or servant, and may if they think fit cause the offender to be apprehended and carried before a justice, who shall hear and determine any such offence in a summary way; and every officer or servant upon conviction of such offence before a justice shall be liable to a penalty not exceeding two hundred dollars, or at the discretion of the justice, to be imprisoned in the common jail or penitentiary, there to be kept with or without hard labor for any term not exceeding six months.

Convicts, how
tried; register,
evidence of its
contents.

19. Every convict or person who shall commit any offence mentioned herein, for which he is not liable to be summarily convicted, may be tried before the supreme court at Halifax or in the county in which he shall be taken, and in case of any prosecution for any such offence, a copy properly attested of the order of commitment to prison with proof that the person in question is the same who was delivered with such order and the production of the register of the prison shall be sufficient evidence of all the facts entered in such register as to such convict, without the production of any other proof that such convict had been convicted of felony and legally sentenced to imprisonment in the penitentiary.

Expenses of
establishment,
how provided.

20. An account of the expenses of carrying these provisions into execution shall be annually laid before the

legislature, and after deducting therefrom any profits arising from the earnings of the convicts, the balance shall be provided for by such sums as may be granted by the legislature. CHAP. 23.

21. The laws for protecting justices in the execution of their office shall extend to the board and the keepers of the penitentiary. Protection of board and keepers.

22. All actions and prosecutions for anything done in pursuance of these provisions shall be laid and tried in the county where the act was committed, and shall be commenced within six months thereafter. Limitation of actions.

23. Any person convicted of felony under these provisions shall be liable to imprisonment in the penitentiary for a term not more than fourteen years nor less than one year, as the court shall award. Imprisonment regulated.

CHAPTER 23.

OF SABLE, SAINT PAUL, AND SCATTARIE ISLANDS, AND OF LIGHT HOUSES.

1. Any member of the board of works or their superintendent, or the resident keeper, or any person acting under the authority of them or either of them, may apprehend any person who may be found residing on Sable Island or Saint Paul's Island, having voluntarily gone there for any purpose whatever without a license from the governor describing such person and authorizing him to reside thereon, and may bring him and all property found in his possession to Halifax; and three justices, upon proof that he was so found, may commit him to jail for not more than six months, and further until he give security for his future good behaviour; and whatever property may be found on the islands belonging to any such offender shall by order of such justices be sold, and the proceeds applied to that purpose, and the residue, if any, returned to the owner; but if it appear that such property has been cast on the shores of the islands, or procured from some wrecked or stranded vessel, it shall be sold, and the proceeds after payment of the expenses paid to the owner or his agent, or otherwise be paid into the treasury for the right owner when discovered, who, upon proof to the satisfaction of a judge of the supreme court of his right thereto, shall receive the same. Persons and property found on Sable Island, how disposed of.

2. The board may, from time to time, make rules for the government of these islands, and for regulating the Rules for regulations of islands, how made.

CHAP. 23. duties of the resident keepers thereon, for administering relief to shipwrecked persons and their removal, preserving and removing shipwrecked property, and preventing persons not authorized by the governor from taking up their residence thereon, and for the general management of the islands.

Members of board, &c., may act as justices.

3. Every member of the board, and also their superintendant and resident keeper, shall have in every respect upon Sable Island and Saint Paul's Island, and in relation to wrecks or wrecked goods there and elsewhere, the same power and authority as a justice of the peace.

Vessels and goods, &c., how disposed of.

4. When vessels or goods shall be stranded on Sable Island, Saint Paul's Island, or the bars or coasts thereof, and they or any part thereof shall be saved by any of the board, or their superintendant, or any person under the authority of the board, they shall be taken in charge by the superintendent or keeper and sent to Halifax to be disposed of by the board for the benefit of the owners after payment of salvage to the establishment of Sable Island and Saint Paul's Island, and all other expenses incurred with respect to them, unless the board shall give contrary orders to the superintendant or keepers; and all goods so saved shall be held to be in the possession of the board, and shall not on any pretence be taken out of the custody of such superintendants or keepers, or persons employed by either of them, except by order of the board, nor until payment of the salvage and expenses; and such goods shall be liable to duties.

Sable island within Halifax county.

5. In all proceedings in any court, Sable Island shall be held within the county of Halifax, and Saint Paul's Island in the county of Victoria; and any person charged with committing any criminal offence committed thereon, or on the shores, banks, or bars thereof, may be proceeded against and tried as if the islands were actually within the body of such counties respectively.

St. Paul's, Victoria county.

Expenses of St. Paul's and Scatterie lights.

6. There shall be annually paid to her majesty, out of the public revenues, towards the support of the light houses and humane establishments on the islands of Saint Paul's and Scattarie, so long as they shall continue in operation, such sum of money as shall from time to time become payable on the part of this province under the terms of an award made on the sixteenth day of August one thousand eight hundred and thirty-six, at Miramichi, by commissioners or arbitrators appointed for that purpose by the provinces of Lower Canada, New Brunswick, Nova Scotia, and Prince Edward Island, and the governor shall in each year draw his warrant for such sum in favor of the board of works.

CHAP. 24.

CHAPTER 24.

OF THE PUBLIC RECORDS.

1. The books, papers and records of all public offices, provincial and county, are hereby vested in her majesty the queen and her successors.

Vested in her majesty.

2. If any person shall wrongfully take, withhold or retain possession of any public document, book, record, writing, or other paper, he may be proceeded against for the recovery of the same in a summary manner.

Parties taking or retaining them may be proceeded against.

3. Upon grounds laid by affidavit before the supreme court or any judge thereof, an order, at the instance of one of the law officers of the crown, may issue at the suit of her majesty, requiring the parties in whose custody such documents, books, records, writings, or other papers are to be given up to the proper custodian, or as therein directed.

Mode of procedure.

4. It shall be in the discretion of the court or judge granting the same whether an order absolute or an order *nisi* shall be first granted; and costs shall follow when an order is obtained, unless otherwise directed.

Order to be in discretion of court or judge.
Costs.

5. Any party feeling aggrieved by the order of a single judge may, upon filing with the prothonotary in Halifax a bond to her majesty in a sum to be named by a judge of the supreme court for security for costs, appeal from the decision of a judge to the court at bar, where the whole matter may be heard and disposed of as such court may decide.

Appeal.

TITLE VI.

OF THE MANAGEMENT AND REGULATION OF THE PUBLIC DOMAIN.

CHAPTER 25.

OF MINES AND MINERALS.

1. The word "mines" in this chapter shall mean any locality in which any vein, stratum or natural bed of coal or of metaliferous ore, earth or rock, shall or may be worked. The verb "to mine" in this chapter shall include any mode or method of working whatsoever, whereby the ore, earth, or soil, or any rock, may be distributed, removed, washed, shifted, smelted, refined, crushed, or otherwise dealt with, for the purpose of obtaining gold, coal, iron, copper, or any other ore or metallic substance, and whether the same may have been previously disturbed or not.

Definition of term "mine."

"To mine."

Amended 1865 April 2, 1868 April 1.

CHAP. 25.

Gold bearing
quartz.

Gold elsewhere
than in rock.

Chief commis-
sioner of mines
and deputies;
how appointed.

To have power
of justice of the
peace.

Proviso.

Inspector of
mines; how
appointed—his
duties, &c.

Duration of
office—bonds
to be given.

Salaries.

Incapable of
sitting or voting
in house of
assembly.

2. Gold bearing quartz shall be held to mean all auriferous rock *in situ*.

3. Gold elsewhere than in rock *in situ* shall mean alluvial mines.

4. The governor in council is hereby authorized to select and appoint, when and so often as occasion may require, a suitable person to act as chief commissioner of mines for the province, and suitable persons to act as deputy commissioners of mines in the several districts hereinafter provided for, one of whom shall be named provincial deputy commissioner, and to define the limits of their jurisdiction respectively; and by virtue of and during the continuance of such appointment, such chief commissioner of mines within all the gold districts, and such deputies within the districts to which they are respectively appointed, shall exercise the power of justices of the peace; provided always that no such commissioner shall act as a justice of the peace, at any court of general or special sessions, or in any matter out of session except for the administering of affidavits, the preservation of the peace, the prevention of crimes, the detection and commitment of offenders, and in carrying out the provisions of this chapter.

5. The governor in council shall also appoint an inspector of mines, who shall be a competent, scientific, practical coal-mining engineer, whose duty it shall be to visit from time to time as may be deemed necessary, and inspect the various mines belonging to or under lease from the crown, to ascertain if the laws, stipulations and agreements relative to the working and management of such mines, and to the payment of rents and royalties accruing therefrom are complied with; and if the same are being worked in a scientific, workmanlike and effective manner, due regard being had both to maintaining the value of such mines and providing for and protecting the safety of the persons employed therein; and the inspector of mines shall, from time to time, report in accordance with the facts to the chief commissioner of mines.

6. The chief commissioner of mines and his deputies, and the inspector of mines, shall hold office during pleasure, and shall give bonds for the faithful discharge of their duties, in such sums as may be fixed by the governor in council. The salary of the chief commissioner of mines shall be two thousand dollars. The salaries of the deputy commissioners shall be fixed by the governor in council not to exceed three dollars per day while actually employed. The salary of the inspector of mines shall be fixed by the governor in council.

7. The chief commissioner, deputy commissioners, and inspector of mines, shall be incapable of being elected to, or of sitting or voting in, the house of assembly; and any such commissioner, deputy commissioners, or inspec-

tor of mines, who shall sit or vote as a member shall forfeit two hundred dollars for every day in which he shall so sit or vote, to be recovered in the supreme court. CHAP. 25.

Forfeiture, how recoverable.

8. No chief commissioner, deputy commissioner, or inspector of mines, shall vote, or take any part, or use any influence, directly or indirectly, in the election of any representative to sit in the assembly, under a penalty of two hundred dollars for every such offence, to be recovered in the supreme court.

Penalty for voting or using influence at elections.

How recoverable.

9. No chief commissioner, deputy commissioner, or inspector of mines, shall be directly or indirectly interested in any mine or mining operations, or in the proceeds or profits thereof, nor shall he act as the agent or attorney of any person interested therein, under a penalty of one thousand dollars for every offence to be recovered in the supreme court.

Shall not be interested in mine, act as agent, &c. of party interested.

Penalty, how recoverable.

OF GOLD MINES.

10. The governor in council, on being satisfied of the discovery of gold in any locality, may, by proclamation in the royal gazette, declare such a locality to be a gold district, and assign limits and boundaries to such district, and from time to time enlarge, contract, or otherwise alter such limits.

Gold district, how established, &c.

11. Quartz mines shall, so far as local peculiarities or other circumstances may permit, be in general laid off in areas of one hundred and fifty feet along a quartz lode, by two hundred and fifty feet across, which shall hereinafter be known and described as areas of class number one.

Quartz mines, how laid off.

12. Areas shall be laid out, as far as possible, uniformly, and in quadrilateral and rectangular shapes. Measurements of areas shall be horizontal, and each area shall be bounded by lines vertical to the horizon.

Areas, form of &c.

13. Alluvial mines not under lease at the time of the passing of this chapter, and alluvial mines under lease at such time, but which shall hereafter be surrendered by their lessees, or become forfeited to the crown, shall be laid out, as far as local peculiarities will allow, as directed in case of quartz mines, the courses of the respective boundary lines of such mines to be decided by the chief commissioner of mines; and the advance payments, or rents, and royalties, shall be the same as those of quartz mines.

Alluvial mines how laid out.

14. The chief commissioner of mines, and each deputy, shall be provided with a book of record, wherein shall be entered all applications for areas, with the precise time of their being made, showing the description of area applied for, the amount paid, the name or names of the applicants in full, with the name of the party paying, which shall be open at all reasonable times to the inspection of all persons desiring to see the same; and as each applicant shall pay for and file his written application for a mine, the name of the applicant shall be written on the area or areas applied for; and each deputy commissioner shall make a return

Chief Commissioner and deputy to keep application book.

Open for inspection. Entry of applications.

Return of deputies.

CHAP. 25. weekly, or oftener if required, to the chief commissioner, of all applications so made, and of the names written on the plan required by the fifteenth section, and remit the amounts paid.

Plans to be prepared and kept and areas marked thereon.

15. It shall be the duty of each deputy commissioner to prepare, when necessary, and keep a plan of the gold field or fields within his jurisdiction, with the areas that shall have been laid off distinctly marked thereon; and with his weekly or other return to the chief commissioner he shall forward a duplicate plan of all surveys made during the week, if any; and the chief commissioner shall cause such plan to be forthwith copied upon a general plan to be prepared and kept by him of the gold fields in question.

Duplicate to be returned weekly.

General plan.

Application, how made, &c.

16. The deputy commissioner shall on receipt of an application endorse thereon the precise time when received; but no application shall be valid unless made in writing, defining the area applied for, and accompanied, except in case of free claim by discovery under the provisions of this chapter, by the advance sum hereinafter required to be paid for such area.

Advance to be paid on application.

17. The advance sum to be paid upon every application made after the passing of this chapter for a gold mine shall be at the rate of two dollars for each area of class number one; but nothing herein contained shall prevent the repayment out of royalty accruing from the leased premises of any such advance sum paid in accordance with any former act of this province.

Private lands, agreement relative to.

18. Applicants for leases of mining areas on private lands may arrange by agreement in writing with the proprietors for leave to enter, and for easements and for damage to lands; and in such case the agreement shall be deposited with the chief commissioner, or deputy commissioner for the district, and the applicant shall thereupon be immediately entitled to his lease, and to enter and mine upon the area applied for.

When no agreement arbitrators to be appointed, how, &c.

19. When no agreement shall have been made between the applicant for a mine and the owner of the land as provided for in the eighteenth section of this chapter, it shall be lawful for the said applicant to give notice to the owner, tenant, or other persons interested therein, to appoint an arbitrator to act with another arbitrator named by the applicant, in order to award the amount of damages to which the owner, tenant, or other person interested in said land shall be entitled by reason of the opening of a mine thereon, and such notice shall be personally served upon the person or persons to whom addressed, or left at his, her or their last place of abode at least ten days before the expiration of the time therein limited for the appointment of such arbitrator.

Arbitrators to be sworn—their duties, powers, &c.

20. The arbitrators thus chosen by the applicant, and the owner, tenant, or other person interested in the soil,

shall be sworn to the impartial discharge of the duties assigned them; and they shall forthwith proceed to estimate the reasonable damages which the owners and tenants of such land, according to the several interests therein, shall sustain by reason of the opening of necessary shafts and other excavations, the construction of roads and drains, the erection of necessary works and buildings thereon, and of the occupation of so much thereof to be determined by the inspector of mines in the event of any question arising thereupon, as the applicant may require for all other purposes connected with the opening and working a mine or mines to the most advantage thereon. In estimating such damages, the arbitrators shall value the land irrespectively of any enhancement thereof from the supposed existence of gold or other minerals, ores or metallic substances therein or in the neighbourhood thereof. In case the arbitrators cannot agree they may select a third arbitrator.

CHAP. 25.
In case of disagreement to select third.

21. When the proprietor is unknown or cannot be found, or upon notice refuses or declines to appoint an arbitrator, or when for any other reason no arbitrator is appointed by the proprietor or proprietors within the time appointed therefor in the notice provided by the nineteenth section, the custos of the county wherein the lands lie shall appoint one on his or their behalf; and when two arbitrators cannot agree upon a third arbitrator, as directed in the last section, the custos of the county shall select such third arbitrator, who shall be sworn as aforesaid. The award of any two of the three arbitrators made in writing shall be final.

When no arbitrator appointed by proprietor, custos of county to appoint for him.

Award.

22. When it shall be made to appear to the chief commissioner of mines that the applicant has paid the damages awarded against him to the person or persons entitled to receive the same, he shall be entitled to enter upon the area applied for and to receive a lease thereof as hereinafter directed.

When applicant entitled to enter.

23. When the right shall be in dispute, or the persons entitled be unknown or uncertain, the party liable therefor shall pay the awarded damages to the county treasurer; such payment to the county treasurer to be equivalent to the payment hereinbefore directed.

When right in dispute or unknown, &c., damages to be paid to county treasurer.

24. Payment of such damages, by the party liable therefor, to the persons designated by the award as entitled thereto, or if the award shall not designate the persons entitled, to such persons as, in the absence of any dispute, shall be ostensibly entitled thereto, shall exonerate the party making payment; but any persons subsequently claiming to have been entitled to the damages so paid, may prosecute their claim by action for money had and received against the persons to whom the payment shall have been made.

Payment to exonerate party making it.

CHAP. 25.

Disputed title;
damages, how
paid.

25. In case of disputed or unknown title, the supreme court, or a judge thereof, on application of the claimant, shall order the damages paid to the county treasurer, to be paid to the persons who, on due investigation by such court or judge, shall have established their right; but no order shall be made until it shall be shown that notice has been given sufficient in the judgment of the court or judge to protect the rights of all persons who may be or who may claim to be interested.

Mining lessee
not implicated.

26. The mining lessee or licensee, shall not be implicated in controversies between persons contesting title to the damages.

Award not to be
set aside for
informality, &c.

27. In no case in which the award shall find the amount of damages with sufficient certainty shall such award be set aside, because the persons entitled to damages are not designated by name or sufficiently designated, or by reason of irregularity as to the persons entitled or of any matter of form; but a judge or the supreme court shall rectify any error or informality, or shall adopt such proceedings as may be necessary for determining to whom the damages may be paid, or for otherwise carrying into effect the provisions and intent of this chapter.

Lessees, &c.
answerable for
other damages.

28. The parties obtaining licenses and leases under this chapter and those deriving title under them, shall be answerable for damages that may ensue from the falling in of lands or for other injury which may be sustained by the owners or tenants of such lands subsequent to the agreement for or award of damages required by the foregoing sections, by reason of the works of the parties obtaining licenses or leases, or of those under them or deriving title from or through them.

Duration of
leases—surrender &c.

29. All leases shall be for the term of twenty-one years; but the holder of any such lease may at any time surrender the same by notice in writing signed by him and filed in the office of the chief commissioner of mines; but nothing herein contained shall be construed to discharge him from liability in respect of any covenants in the lease, for or in respect of any act, matter, or thing for which, at the date of such surrender, he was liable under the terms of such lease.

Forfeiture.

30. Such leases may be forfeited on failure to pay the stipulated royalties other than those arising from quartz crushed at a licensed mill, or to keep employed annually on the demised premises the number of days' labor herein-after specified, or to comply with any other of the provisions and stipulations in the lease contained.

Holders of mi-
ning leases to
use lands for
mining pur-
poses only.

31. The holder of such mining lease shall not use any part of the lands so demised for any other purpose whatsoever, except such as shall be necessary for making roads, opening drains, erecting necessary works, buildings, and all other purposes connected with the opening and working

such mines to the most advantage; and all necessary ways and watercourses on the demised premises, whether expressly reserved in such lease or not, shall be considered as reserved to the crown, and in respect to the making, alteration and use thereof, shall be subject to such orders and regulations as the governor in council may from time to time consider expedient; and all licensees and lessees and other persons employed about the mines on such demised premises shall use the lands in such manner as will be least injurious to the owners and occupants of such lands, or any other lands lying contiguous thereto.

32. There shall be employed annually on the demised premises a number of days labor equivalent to one hundred days for every number one area comprised therein. But any lessee holding ten or more but less than twenty areas of class number one in any one gold district, will not be required during the *first* year of his holding to keep employed more than three-fourths of the number of days labor above required to be performed per area; in like manner if holding twenty or more, but less than thirty of such areas in the same district, he shall be required to keep employed only one half; and if holding thirty or more, only one fourth the above required number of days labor during such first year. This section shall apply to all leases the first year whereof terminated on or after the first day of April, A. D. 1864.

Labor on area
how regulated.

33. In computing the number of days labor employed by any lessee at the termination of any one year, all or any of the leases which he at the time holds of mining areas in any one district, not exceeding twenty-four in number, may for this purpose be tacked and considered as one lease; and if it is ascertained that an amount of labor equal to the whole amount which he is required to have performed upon the whole of the said areas, has been actually expended upon any one or more of said areas, the law in this respect will be held to have been complied with, although the lessee may not have employed upon each separate mining area the number of days labor required by the last preceding section. This section shall apply to all leases the first year whereof terminated on or after the first day of April, A. D. 1864.

How computed

34. Where a lessee shall have employed in any one year a part only of the amount of labor required to be performed by him annually upon the premises demised to him in any one district, or under any one lease, the whole of the areas held by him in such district or under such lease, shall not necessarily become forfeited therefor, but only a part of such demised premises proportionate to the number of days labor which such lessee has failed to have performed, shall become forfeited; and such lessee shall make selection of that part of the demised premises which

Where part of
labor perform-
ed, forfeiture
partial.

- CHAP. 25. he will retain. To avail himself of the provisions of this section a lessee must make known his selection by notice in writing to the chief commissioner of mines within ten days after the termination of the year for the non-performance of labor during which a portion of the premises demised to him became forfeited; and the areas selected by him to be retained shall so far as possible be in a compact block and not detached from each other, and no number one area shall be divided in making such selection. Should any one lease contain areas thus retained and also areas which are forfeited, such lease shall be surrendered by the lessee who shall receive a new lease of the new areas so retained, and for the unexpired portion of the term for which the surrendered lease had been given.
- Right to select. Notice of selection.
- New lease of part.
- Provido.
- When lease forfeited, title of lessee to vest in crown.
- Lessees may remove buildings, &c.
- Applications for mines without a gold district, or governed.
- Where mine occupied previous to April 1st 1864, and no agreement made with proprietor, chief commissioner shall proceed to settle damages.
35. When from any cause whatsoever a leased mine shall become forfeited to the crown under the proceedings directed by the 73rd clause of this chapter, all the right, title and interest which the holder of such forfeited lease had therein immediately previous to such forfeiture, shall upon such forfeiture become thereby vested in the crown; but the lessee of any mine may during his lawful occupancy thereof take down and remove any houses, buildings, machines or other erections built or placed by him thereon, notwithstanding that the same be considered in law as attached to the freehold.
36. Applications may be made for a mine or mines upon lands not lying within any proclaimed gold district, and in such case the rights of parties and the proceedings to be taken with reference thereto shall be governed as far as possible by the spirit and provisions of this chapter. Parties occupying and staking off areas corresponding in size with those prescribed hereby shall be entitled to priority in the order of their making application as hereinbefore required to the chief commissioner of mines. In case the lands so applied for shall afterwards be included within any gold district, and laid off as hereinbefore prescribed, the rights of the occupants shall be respected so far as is consistent with the terms of this chapter, in adjusting the boundary lines between the parties in occupation.
37. In all cases where mining areas have, previous to the first day of April, 1864, been leased, or have been occupied by virtue of a gold commissioner's authority, on private lands not subsequently revested in the crown, and with respect to which no agreement has been made, nor was on the first day of April, A.D. 1864, being negotiated, for land damages between the lessee and the owner of the

soil, the chief commissioner of mines shall proceed to CHAP. 25.
 arrange with the owners of the soil for such damages by
 mutual agreement or arbitration, and to pay such damages
 in the manner and form prescribed by the eighteenth and
 subsequent sections of this chapter for applicants for
 mining leases; and in such cases the chief commissioner
 of mines shall occupy, so far as circumstances will permit,
 the same position relative to the owners of the soil which,
 under the clauses above referred to, would be held by an
 applicant for a mining lease on private lands whose appli-
 cation is made after the passing of this chapter.

38. The chief commissioner of mines may issue licenses Prospecting
 to search for gold, to be called "prospecting licenses," licenses to be
 which shall be subject to the rules prescribed by this issued by chief
 chapter. commissioner
 of mines.

39. Such licenses may include any area not exceeding Area of same;
 one hundred acres in extent, so as the same shall be laid form of &c.
 off in quadrilateral and rectangular figures, and shall not
 in length exceed double the breadth thereof.

40. Such licenses shall be in force for any period not Duration of.
 exceeding three months from the date thereof.

41. All applications for prospecting licenses shall accu- Application for.
 rately define by metes and bounds the lands applied for, Payment, &c.
 and shall be accompanied by a payment at the rate of fifty
 cents per acre for every area up to ten acres in extent, and
 twenty-five cents for every acre in addition to that extent.

42. Before such application shall be granted the appli- Bonds to be
 cant shall enter into a bond with two sureties to the given for dam-
 satisfaction of the commissioner of mines to recompense ages to private
 the proprietor of the soil in the event of entry being lands, &c.
 made on private lands for damages done to his lands; to
 employ and lay out during the continuance of the license
 in prospecting the lands applied for labor to the extent of
 one man per day for every lot not exceeding five acres in
 extent, and for any quantity above five acres at the rate of
 one additional half day for every additional quantity not
 exceeding ten acres; and to make the quarterly returns
 and to pay the royalties hereinafter required.

43. If the proprietor of private lands so entered upon Damages to
 shall seek damages he shall before the end of three private lands,
 months after the expiration of the license make his claim how recovered.
 in writing against the holder of said license, detailing the
 particulars and amount of claim; and if the claim is not
 adjusted by agreement between the parties within one
 month after notice thereof as aforesaid it may be settled
 by arbitration in accordance with the provisions of section
 eighteen and subsequent sections of this chapter; but in
 such case either of the parties may give the required notice
 to appoint an arbitrator, and the custos of the county may
 appoint an arbitrator on behalf of either of such parties
 neglecting or refusing to make such appointment.

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Holder entitled
to renewal.

44. The holder of a prospecting license who shall have fulfilled all the terms and conditions thereof shall be entitled to a renewal thereof for a second period of three months upon like terms and conditions, except that the price of the same shall be only half that paid on the previous application.

Holder entitled
to select areas,
&c. and to lease.

45. Within the period for which the license or renewed license is granted the party holding the same shall be entitled to select any area or areas not exceeding one quarter of a mile on the lode and in breadth five hundred feet comprised therein, in form as described in this chapter, and shall be entitled to a lease of the areas selected upon the terms imposed herein.

Lease or license
not to affect
cultivated lands
&c., without
consent of
occupier.

46. No lease nor any prospecting license shall authorize entry upon any buildings or the curtilage appertaining to any house, store, barn or building, or upon any garden, orchards or grounds reserved for ornament or under cultivation by growing crops and enclosed, except with the consent of the occupier or by special license from the governor in council authorizing such entry to be granted, on special application setting forth the circumstances under which the same is applied for and on such terms as the case may require.

Royalty reserved.

47. On all leases of gold mines and prospecting licenses to search for gold there shall be reserved a royalty of three per cent upon the gross amount of gold mined.

New discoverer
entitled to free
lease.

48. The discoverer of any new mine shall be entitled to a lease for twenty-one years free from advance payment or royalty, of an area of class number one as prescribed by this chapter.

New discovery,
how far distant
from known
mines.

49. No person shall be considered the discoverer of a new quartz mine unless the place of the alleged discovery shall be distant, if on a known lode, at least three miles from the nearest known mine on the same lode, and if not on a known lode at least one mile at right angles from the course of the lode; if in alluvial workings, at least two miles distant from any previously discovered mine.

Licenses for
mills, machinery,
&c.

50. It shall not be lawful for any person or persons to use or employ any mill or machinery, other than mills or machinery worked by hand, for the crushing or reduction of quartz or the obtaining of the gold therefrom by crushing, stamping, amalgamating, or otherwise, without a license therefor first had and obtained.

To be signed by
chief commissioner
of mines.

51. Licenses shall be signed by the chief commissioner of mines.

Licensed mills;
definition of
term.

52. The words "licensed mills" when used in this chapter shall signify mills and machinery so licensed; and the words "licensed mill owner," the person or persons to whom such license shall be granted.

Licensed mill
owner; definition
of.

Bond.

53. Before any such license shall be granted the party applying therefor shall enter into a bond to her majesty in the penalty of two thousand dollars.

54. Licensed mill owners shall keep on the demised premises a book or books of account to be supplied by the commissioner of mines, which shall at all times be open to the inspection and examination of the commissioner of mines or his deputy, the inspector of mines, or any other person thereto authorized by the commissioner of mines; in which book or books shall be entered a clear and distinct statement of all quartz crushed, amalgamated or reduced at such licensed mill, and the following particulars in respect of the same :

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Books to be kept, open to inspection of commissioner of mines or deputy.

I. The name of the owner or owners of each distinct parcel or lot of quartz crushed.

Entries to be made therein.

II. The weight of each such parcel or lot.

III. The date of the crushing of the same.

IV. The actual yield in weight of gold from each such parcel or lot.

V. The royalty thereon calculated at three per cent.

VI. The mine or area, so far as the same is known or can be ascertained, from which each such parcel or lot was raised.

55. Each licensed mill owner shall separate from the yield or produce of gold of each lot or parcel of quartz as crushed three parts out of every hundred parts of such yield as the portion thereof belonging and payable to her majesty as royalty, and shall pay the same in such weekly or other payments as the chief commissioner of mines shall order into the office of the chief commissioner of mines or his deputy for the district, or otherwise shall pay as aforesaid the equivalent in money for the same at the rate of nineteen dollars and fifty cents per ounce troy for smelted gold, and eighteen dollars and fifty cents per ounce troy for unsmelted gold.

Royalty, how paid, &c.

56. So soon as gold shall be obtained by amalgamation or otherwise from any parcel or lot of quartz crushed at any licensed mill, three parts in the hundred of such gold shall forthwith thereafter be and become the property of her majesty.

Royalty.

57. In case any licensed mill owner shall fail to pay such three parts on the hundred of gold or money in lieu thereof in the mode and at the times prescribed by this chapter, he shall be liable to an action at the suit of the commissioner of mines as for money had and received to his use for the value of said gold, estimated at nineteen dollars per ounce troy.

On failure to pay royalty millowner liable to action.

58. Such action may be brought according to the amount of the claim before the same courts which would have jurisdiction in case the amount claimed were an ordinary private debt.

Action; how brought.

59. Each payment of gold or money made by a licensed mill owner shall be accompanied by a copy of so much of his said book of account as shall be required to show the

Payment by what accompanied.

CHAP. 25. particulars prescribed by the fifty-fourth section hereof, which shall be verified by the affidavit of the person principally employed in keeping such account made before the commissioner of mines or his deputy or before a justice of the peace; and on failure to make such returns or to verify the same as aforesaid the license may be revoked by the commissioner of mines, subject to appeal as prescribed in section sixty-two of this chapter.

Forfeiture for working mill, &c without license.

60. Any owner or part owner in any mill or machinery for the crushing or reduction of quartz or for the obtaining of gold therefrom (other than mills or machinery worked by hand) which shall be engaged, used or employed in the crushing or reduction of quartz, or in the obtaining of gold therefrom, without a license therefor first had and obtained as prescribed by this chapter, and any person or persons engaged as agent, servant, workman, clerk, or otherwise in any such mill, shall forfeit and pay each the sum of four hundred dollars for each offence, and for every day in which such offence shall be continued the same shall be considered a new offence.

Licenses may be revoked for fraud in account books.

61. When the account books prescribed by this chapter or any of the accounts hereby required, shall be fraudulently or falsely kept, or the affidavits hereby prescribed, or any of them shall be false or fraudulent, the license to the mill in respect of which the offence has been committed may be revoked.

Chief commissioner to enquire into alleged fraud, &c.

62. The chief commissioner of mines shall be authorized to inquire into any such alleged fraud, and to revoke such license if satisfied that such fraud has been committed, but his judgment shall be subject on appeal to the revision of a judge at chambers who shall make such order in respect of the same as shall be agreeable to law and justice, and if he thinks fit may order any question of fact to be tried by a jury.

Appeal, &c.

Judge may order question of fact to be tried by a jury.

Penalty for fraud, in addition to forfeiture of license.

63. In addition to the forfeiture of license, any licensed mill owner in respect of whose licensed mill such fraud shall have been committed, shall be liable for each offence to a penalty of not more than two thousand dollars, to be recovered in the supreme court.

Return upon royalty paid.

64. Every licensed mill owner who shall in all respects have complied with this chapter, shall be entitled to receive from the chief commissioner of mines at the end or expiration of every three months from the date of his license, a sum equal to five per cent upon the amount paid over by him as royalty during such period.

Millowner may surrender license.

65. A licensed mill owner may at any time surrender his license by delivering the same into the office of the commissioner of mines, with a written surrender endorsed thereon, but no such surrender shall take effect till after the lapse of ten days from the filing at the office of the chief commissioner of mines of a notice in writing of the intention of such mill owner to surrender the same.

66. Upon such surrender taking effect as aforesaid, such mill shall cease to be a "licensed mill" until again licensed under the provisions of this chapter. CHAP. 25.

On such surrender license to cease.

67. The licensed mill owner so surrendering his license and his sureties shall remain liable under their bond for all obligations accruing thereunder up to the time when the surrender takes effect as aforesaid; but shall not be liable for obligations accruing thereafter.

Millowner to be liable for accrued obligations.

68. Lessees of mines shall be bound to make to the office of the chief commissioner of mines or his deputy for the district, on the first day of January, April, July and October in each year a true and correct return to the best of their knowledge and belief, on forms to be supplied by the chief commissioner of mines, in which shall be comprised the following particulars:

Lessees of mines to make returns quarterly.

I. The number of days labour performed on the demised premises during the preceding quarter.

II. The number of tons of quartz raised from the demised premises during the preceding quarter.

III. The person or persons to whom the same has been sold or disposed of, and the different lots or parcels in which the same have been sold or disposed of, with dates.

IV. The weight of quartz sent by him during the quarter to any licensed mill, and the name and description of the mill to which the same has been sent; and when the same has been sent and kept in distinct parcels, the weight of each separate parcel.

V. The yield of each separate parcel or lot, as returned and allotted by the mill owner, with the date of allotment and of receipt.

VI. The quantity of all gold obtained from the mine in any manner during the quarter, distinguishing that resulting from the quartz crushed at licensed mills from the gold otherwise obtained; which return shall be verified by affidavit to be made before the commissioner of mines, one of his deputies, or a justice of the peace.

69. The lessee of each mine shall be liable for royalty upon all gold obtained from his mine in any other way than from quartz crushed at licensed mills; but he shall be exempted from any claim in respect of gold obtained from quartz so crushed, the liability of the mill owner for such royalty being hereby substituted instead of that of the lessee.

Lessee liable for royalty on all gold obtained otherwise than from quartz crushed by licensed mills.

70. When any parcel of quartz from a free mine shall have been crushed at a licensed mill, the owner of the quartz on proof of the facts to the satisfaction of the commissioner of mines, shall be entitled to receive from the chief commissioner of mines the amount deducted by the licensed mill owner and paid as royalty under the provisions of this chapter.

Free mine, royalty returned.

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Lessee liable to action on failure to pay royalty.

71. In case any holder of a lease granted under this chapter shall fail to make payment of any royalty accruing under the terms of the sixty-ninth section within ten days after the time prescribed by this chapter for making his return to the chief commissioner or his deputy, he shall be liable to an action at the suit of the commissioner of mines, as for money had and received to his use for the value of the royalty so accruing, estimating the same at nineteen dollars per ounce troy.

Action, how brought.

72. Such action may be brought according to the amount claimed before the same court which would have jurisdiction in case the amount claimed were an ordinary private debt; and on a change of commissioner of mines, actions prosecuted by him shall be continued and prosecuted by and in the name of his successor; and a commissioner may prosecute in his own name as for money had and received to his use, although the action for the same had accrued to a previous commissioner.

Alleged forfeiture, how investigated, &c.

73. In any case of alleged forfeiture of any mining lease for non-compliance by the lessee with the terms, stipulations and conditions therein contained or by this chapter required, the deputy commissioner for the district, or if the leased premises are not within a proclaimed gold district, or are in a gold district where there is no deputy commissioner, then the chief commissioner of mines shall investigate the said case and decide in a summary way thereon; and where such decision declares the lease in question to be forfeited the chief commissioner or deputy commissioner so deciding shall immediately thereafter have a notice personally served upon such lessee, or some or one of them where more than one are included in the same lease, or his or their agent or person principally employed on the premises, if to be found within the gold district, and if not, such notice shall be posted up upon the leased premises, which notice shall convey the decision of the commissioner or deputy commissioner, and briefly state the grounds thereof. The deputy commissioner shall also in all such cases report his decision to the chief commissioner with a statement of the facts upon which the same is founded.

Appeal, &c. to chief commissioner.

74. If within ten days after the service or of the posting up such notice the lessee or lessees against whom the decision was made, or any person acting on his or their behalf, give notice to the chief commissioner of mines that he is aggrieved at the decision of the deputy commissioner and appeal against it, the chief commissioner shall appoint a time and place for hearing such appeal, of which such lessee or lessees shall have reasonable and timely notice; and at such time and place the chief commissioner shall proceed to investigate the case anew and decide upon the whole facts thereof.

75. From the judgment of the chief commissioner of mines, either in the first instance or on appeal, the party interested may appeal to a judge at chambers, provided that notice of such appeal be given to the chief commissioner of mines within ten days from the date of his decision; provided also that the party appealing shall on applying for such appeal make and file with the chief commissioner of mines an affidavit that he is dissatisfied with such judgment, and that he verily believes the lease has not been forfeited, and that the conditions in respect of which the forfeiture has been declared have really and truly been performed and fulfilled, and shall within two days thereafter enter into a bond with two sufficient sureties in the penalty of fifty dollars, to enter and prosecute his appeal according to the provisions hereof, and pay all costs which may be adjudged against him by the court of appeal.

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Appeal to judge at chambers.

76. On such appeal being perfected the chief commissioner of mines shall transmit to the prothonotary at Halifax the notes of testimony taken before him; and the judge at chambers shall confirm or set aside the judgment or try the case *de novo*, or make such order thereon as is agreeable to justice and in conformity with law.

Evidence to be sent to prothonotary.

77. If the judge shall consider that the case involves questions of controverted fact on which he may be of opinion the verdict of a jury should pass, he may make an order remitting the trial of the question or questions of fact to the county where the land lies, in which case all the papers shall be transmitted to the prothonotary of that county; and the cause shall come on for trial in its place in the same way as ordinary appeals ordered to be tried by a jury.

Judge may order case to a jury.

78. Upon the finding of the jury on the facts the judge shall pronounce judgment on the whole case. So soon as judgment declaring forfeiture of the lease shall be given, either by a deputy commissioner without appeal, the chief commissioner without appeal, or by the court of appeal when the commissioner's judgment is appealed from, the lessee and all persons holding under him shall thereafter cease to have any interest in the mine leased, and the same shall be open to be leased to any other applicant in the same way as if no lease thereof had ever passed.

After judgment of forfeiture, interest of lessee in mine to cease.

79. The chief commissioner of mines shall have power by warrant to the sheriff or any constable of the county wherein the gold district lies to remove any party in possession of a mine so adjudged to be forfeited.

Chief commissioner may remove parties in possession of forfeited mines.

80. Any person found mining in any lands belonging to the crown, or on any land of a private proprietor, the minerals in which belong to the crown, or entering thereon

Penalty for illegal mining.

CHAP. 25. for the purpose of mining, shall be liable to a penalty for each offence of not less than ten dollars nor more than fifty dollars; but this section shall not extend to parties prospecting or searching for mines.

Proviso.

Each day a distinct offence.

Complaint, how adjudicated upon, &c.

81. Parties violating the provisions of the preceding section shall be considered guilty of a distinct offence for every day they shall unlawfully mine.

82. On complaint in writing made to any justice of the peace of the county in respect of such unlawful mining or entry to mine, the justice shall issue his warrant to apprehend the offender and bring him before the justice to answer the complaint; such justice shall thereupon forthwith enter upon the investigation of the complaint, and in case he shall find the party guilty impose such fines or penalties as the party may have incurred under the provisions of this chapter. In case the defendant requires time for the production of witnesses for the defence, the justice may adjourn the investigation to any period not exceeding six days, on being satisfied by affidavit that such time is required for that purpose, and in such case the defendant shall be committed to gaol unless he gives security to the satisfaction of the justice to appear at the time and place appointed for such adjourned investigation.

Appeal.

Bonds to be given.

83. The decision of such justice shall be subject to appeal, as in ordinary cases, but before such appeal shall be allowed the appellant shall give bonds to pay the costs of the appeal in case of a decision against him, and in case of the defendant appealing to pay such fine as the court of appeal may impose with costs, or to render him in custody of the sheriff.

Gold unlawfully mined; how recovered, &c.

84. Gold in quartz or otherwise, unlawfully mined on the property of any lessee of the crown, shall be considered in law the personal property of the owner of the mine, and a search warrant may be issued for the same by any justice of the peace for the county, in the same manner as for stolen goods; and upon the recovery of any gold under such warrant, the justice shall make such order for the restoration thereof to the proper owner, as he shall consider right.

This chapter not to prevent her majesty using other remedies to recover possession

85. Nothing in this chapter contained shall prevent her majesty from having or using any other remedy now available to recover possession of any mine forfeited from causes cognizable before the commissioner of mines, or from any other cause from which the same may be liable to forfeiture.

OF MINES OTHER THAN GOLD MINES.

Chief commissioner to grant licenses, &c.

86. The chief commissioner of mines may upon application, grant licenses, to be in force for one year from the date of application therefor, to enter upon any lands in

See Act of 1865, Chap 30.

this province not already under license or lease for mining purposes, and to dig and explore for such minerals other than gold as the crown holds for the benefit of the province—a bond being first given to the chief commissioner of mines with sufficient sureties to be approved by the governor in council, that in the event of entry being made upon private lands recompense shall be made for damages in the manner hereinafter provided. CHAP. 25.

Bond to be given to recompense damage to private lands

87. No such application shall be valid unless accompanied by a payment of twenty dollars; and the license of exploration may cover any single tract of ground not exceeding five square miles in extent, but not less than two miles in width. Application.
License of exploration.

88. Upon such application and payment being made the chief commissioner of mines shall cause the lands applied for to be surveyed and laid off; and a full description thereof shall be embodied in the license of exploration, but no such license shall authorize entry upon any lands which in accordance with the forty-sixth section of this chapter are forbidden to be included in any gold mining lease or prospecting license, except as in that section excepted. Upon application and payment, lands to be surveyed, &c.

89. The cost of such survey shall be defrayed by the chief commissioner of mines, but the search for minerals under such licenses shall be made free of all expense to the government, and the holder of the license shall within the time that the same shall be in force, and with all convenient speed, make a report of the result of his explorations to the chief commissioner of mines. Cost of survey to be paid by chief commissioner of mines.
Search for minerals to be free of expense to government.
Report to be made.

90. The said license of exploration may be renewed for a further period of twelve months on application therefor to the chief commissioner of mines, setting forth the special circumstances of the case not less than thirty days before the expiration thereof, and on payment of the further sum of twenty dollars, subject however to the approval of the governor in council upon consideration of the special circumstances submitted. License of exploration, how renewed.

91. If the proprietor of private lands entered under such license shall seek damages, the proceedings for ascertaining the amount of such damages and making payment of the same, shall be the same as provided for by this chapter in the case of prospecting licenses for gold. Damages to private lands.

92. The holder of an exploration license may at any time before the expiration thereof, select from the land covered by such license, an area of one square mile, for the purpose of working the mines and minerals thereon; and may make an application in writing to the chief commissioner of mines for a license to work the same, which application shall be accompanied by a payment of fifty dollars. Holder of exploration license may select area, &c.
May apply for license to work same.
Payment.

93. Upon such application and payment being made, the chief commissioner of mines shall cause the portion Portion selected to be surveyed, dimensions of, &c.

CHAP. 25. so selected to be surveyed and laid off, and shall defray the expense of such survey, which said portion shall be in one block, the length of which shall not exceed two and a half miles; and the person making such survey shall make a report and plan thereof, and transmit the same to the chief commissioner of mines.

Provisions relative to arbitration, &c.

94. All the provisions herein contained relative to settlement by agreement or arbitration with the owner of the soil, where the same is private land, for damages done to his land, and to payment therefor as set forth in sections eighteen to twenty-eight inclusive, and to the occupation of such lands as declared in section thirty-one, and to the exemption of certain descriptions thereof from liability to be leased as specified in section forty-six, and to the vesting of interests forfeited under this chapter as specified in section thirty-five, shall be applicable and in force in the case of mines other than gold mines, equally as in gold mines.

Applicant, when entitled to license.

95. Upon complying with the requirements of this chapter by paying damages where the ground applied for is private land, the applicant shall be entitled to a license to occupy and work the one square mile applied for.

Duration of license to work, &c.

96. Every license to occupy and work shall be for a term of two years from the date of application, and within such term the holder of the license shall commence effective mining operations and shall continue the same in good faith until the termination of such term.

Holder on termination of license to be entitled to lease, &c.

97. The holder of a license to occupy and work, or those representing him, having complied with the terms of the last preceding section, shall on the termination of his license be entitled to a lease of the premises described therein, which lease shall contain all the ordinary provisions of mining leases, with such conditions as the governor in council may think necessary to ensure the effective and safe working of the mine or mines on said premises.

License to work may be obtained without prior exploration license.

98. Any party may apply for a license to occupy and work any vacant mine without having previously obtained or applied for an exploration license, and in such case his application shall embody a description of the area applied for, and upon complying with all the antecedent conditions hereinbefore set forth, except those which relate solely to exploration licenses, he shall be entitled to such license to occupy and work.

Governor in council may authorize granting of leases, &c. of larger area.

99. The governor in council may by special order authorize the granting a lease or license to occupy and work a larger area than one square mile, if on investigation of the special circumstances of the case they may think the public interests would be better subserved thereby, and in such case may impose such further conditions, not at variance with the spirit of this chapter, as may be deemed just.

Leases of coal mines; duration of, &c.

100. All leases of coal mines shall terminate on or before the 25th day of August, A. D. 1886; leases of mines other

than coal mines shall be for twenty-one years; any lease may at any time be surrendered by the lessee in like manner and upon such terms as hereinbefore prescribed for the surrender of a gold mining lease.

CHAP. 25.

Other mines.

101. In the granting of licenses or leases after the passing of this chapter, there shall be reserved a space of twenty yards in width, between the lines of the respective grantees; but on the application of both parties interested, the governor in council may by special order direct a license or lease of such reservation to be granted on such terms and in such manner as may be just and reasonable.

Spaces between lines of areas to be reserved.

102. All licenses and leases of mines and minerals other than gold mines, shall be subject to the following royalties to the crown, to the use of the province on the produce thereof, after it has been brought into marketable condition, payable yearly from the period of their respective dates, that is to say—of five per cent. on all such ores and minerals, except gold, iron and coal—of eight cents on every ton of iron, and of ten cents on every ton of 2,240 lbs. of coal, which said royalties shall be paid to such person or persons, at such times and in such places as the licenses or leases shall respectively stipulate, or as the governor in council may from time to time direct.

Royalties defined.

103. Every licensee or lessee of mines or minerals other than gold mines shall, on the first day of January in each and every year, make a return showing the number of days labor performed on the premises under license or lease, the cost and description of the shafts, adits, levels, drains, and other works and machinery constructed, excavated, or erected thereon—the description and quantity of the material extracted from the mine or mines thereon and subject to royalty—and the amount of royalty which has accrued upon such material extracted during the last previous year. Such return shall be sworn to by two or more credible persons, principally employed in or about the working and management of such mines, before the chief commissioner or provincial deputy commissioner of mines, or a justice of the peace, and shall be immediately transmitted to the chief commissioner of mines.

Lessees of mines to make yearly return.

104. Where it shall be represented to, or shall come to the knowledge of, the chief commissioner of mines, that any mines or minerals claimed under a lease from the crown or under a lease granted pursuant to this chapter, have been abandoned for the space of one year, have not been effectively or continuously worked, or have been worked only colorably, or to prevent a forfeiture under the terms of such lease, or that the lessee of such mines has failed to comply with any of the terms, covenants or stipulations in his lease contained, or by this chapter required, or is acting in violation thereof, the chief commissioner of mines shall cause a notice to be personally served upon the

Mine abandoned how dealt with.

Notice to be served on lessee.

CHAP. 25. lessee or some or one of them, where more than one are included in the same lease, or his or their agent or person principally employed on the premises, or shall cause such notice to be posted up upon the premises leased, where no person can be found to make service thereof, informing him of such charge, and appointing a time, to be not less than fourteen days after the service or posting up of such notice, and also a place for the investigation thereof. At the time and place appointed the chief commissioner of mines shall proceed to investigate the said case and decide thereon, and shall thereupon give notice of his decision to the lessee or his agent by causing such notice to be served or posted up as in this section above directed.

Chief commis-
sioner to inves-
tigate and
decide.

Appeal to judge
at chambers.

105. From the judgment of the chief commissioner of mines the party interested may appeal to a judge at chambers, in which case the proceedings until final judgment shall be the same in every particular as are in this chapter provided for in the case of an appeal against the judgment of the chief commissioner relative to an alleged forfeiture of a gold mining lease.

Map of province
with areas deli-
neated to be
kept in chief
commissioner's
office.

106. There shall be kept in the office of the chief commissioner of mines a map of the province, on which shall be delineated as accurately as may be all the areas under license or lease as mines other than gold mines, and also a book or books of registry, in which shall be registered all the licenses and leases of such mines; and such map and book or books shall be open at all times to the inspection of the public.

Books of regis-
try.

MISCELLANEOUS.

Chief commis-
sioner of mines
may lease
crown lands
within limits of
gold district for
purposes other
than mining.

107. The chief commissioner of mines may lease crown lands being within the limits of any proclaimed gold district, or comprising any tract within which the mines and minerals other than gold are under license or lease, for purposes other than mining, reserving always the rights of present or future lessees of mining areas therein, and subject to such other reservations, and for such terms and upon such conditions as the governor in council may direct; and may also sell any timber not previously disposed of growing or being upon any part of the crown domain, included within any such gold district or other tract under license or lease for mines or minerals other than gold, upon such terms as the governor in council shall authorize and direct.

Lease not to be
void against
person subse-
quently acquir-
ing title.

108. No lease granted under the provisions of this chapter shall be void against any subsequent purchaser, mortgagee for valuable consideration, or judgment creditor, by reason of such lease not having been previously registered in accordance with the provisions of chapter one hundred and seventeen of the revised statutes, "of the registry of deeds and incumbrances affecting lands."

109. The governor in council may at any time by proclamation as in this chapter provided declare a gold district which shall contain an area or areas under license or lease for the purpose of searching for or working mines and minerals other than gold; and in such case the areas under such license or lease shall, notwithstanding such license or lease, become subject to all the provisions of this chapter which relate specially to gold districts and gold mines, under such regulations as the governor in council shall make.

CHAP. 26.

Governor in council may declare special districts.

110. The governor in council is authorized to make rules and regulations relative to gold districts and gold mines, and mines other than gold mines, and licensing and leasing the same, and to the pumping, draining, ventilation, working, management, care, possession and disposal of the same, and to all other matters connected with the same; and to make such rules and regulations general or applicable only to particular districts or localities as may be deemed best; and all such rules and regulations when published in the royal gazette shall have the force of law until repealed by the legislature; provided such rules and regulations shall not be repugnant to the laws of the province or the provisions of this chapter; and such rules and regulations may in like manner be altered, modified or cancelled as circumstances shall require.

Governor in council may make rules, &c

When published in royal gazette to be law until repealed by the legislature.

Proviso.

111. The forms to be used under this chapter shall be substantially the same as those heretofore in use, subject however to such amendments and alterations as the governor in council may from time to time make or direct.

Forms.

CHAPTER 26.

OF THE CROWN LANDS.

1. The surveyor general and commissioner of crown lands shall continue to be styled the commissioner of crown lands.

Title of commissioner.

2. The governor in council upon the recommendation of the commissioner of crown lands may appoint one or more deputy surveyors in each county for the performance of such duties as may be required under the orders issued from the department. The said deputy shall upon his appointment execute a bond to the commissioner with two sureties for the faithful discharge of the duties of his office, and thereupon receive a commission in the customary form to be approved by the governor in council.

Appointment of deputies.

Duties.

Bond.

Commission.

CHAP. 26.

Deputy to receive county plan.

3. Each deputy appointed under this chapter shall be supplied with a copy of the general plan of the county to which he is named, which he shall preserve with all other documents and plans connected with the lands of the county in some convenient place or office within the county where access can be had for information by the inhabitants—said plans, papers and documents to be held as the property of the province and to be transferred to his successor in office whenever appointed.

How preserved.

Deputy to give information.

4. Such deputy shall give all necessary information to persons respecting the lands within his county whenever applied to for that purpose, and furnish any copies of plans that may be required, for which he shall be entitled to the following fees:

Fees.

Each search twenty cents.

Copy of plans with necessary connection, larger plans as may be required upon, fifty cents.

Instructions.

5. Instructions shall be furnished each deputy by the commissioner of crown lands for his guidance in the discharge of his duties.

Deputies to render quarterly accounts.

6. Every deputy surveyor at the expiration of each quarter of the year shall render his account for services, and transmit with the same a list or return of surveys to the commissioner, accompanied by an affidavit in the following form:—

Affidavit.

I——, deputy surveyor for the county of——, do swear that the several lots of land described in the above list have been actually surveyed by me, in accordance with the plans thereof, that all the corner bounds have been set up, and that the lines have been well marked. So help me God.

Sworn to before me at ——, this }
—— day —— of ——.
—— J. P. }

Governor to fix price of ungranted lands.

7. The governor in council may from time to time settle the price to be paid for ungranted lands and the manner of making application therefor.

Purchase, application, and payment.

8. Any person or persons upon due application to the commissioner of crown lands may become the purchaser of such crown lands as may be for sale, upon making immediate payment therefor to the receiver general; and upon the passage of the grant thereof shall be entitled to enter into possession and not before unless under authority in writing from the commissioner of crown lands upon his report being approved.

When purchaser may enter.

Commissioner may lay off wild lands, roads, &c.

9. Wherever there are tracts of land suitable for settlement or likely to command sale it shall be lawful for the commissioner of crown lands when so instructed by the governor in council to lay them off in one hundred acre lots, with convenient roads running through them, to be

allotted for applicants for immediate settlement or purchase. CHAP. 26.

10. Whenever such lots are required by any persons for immediate actual settlement, surveys shall be made and the applicants put in possession and allowed a credit of three years for the purchase money, which or such portion thereof as under the circumstances the governor in council shall think fit to direct shall be expended under such instructions as the commissioner of crown lands with the approval of the governor shall appoint in opening such roads as may be required for the formation or improvement of the settlement.

When required for settlement, surveys, &c. to be made and time allowed for payment.
Purchase money may be expended in opening roads.

11. All the provisions contained in the chapter of immigrants which relate to lands allotted to immigrants for settlement shall apply to lands allotted under the section last preceding in the same manner as if herein enacted and made applicable to settlers.

Immigrant act to apply to preceding section.

12. The governor in council may direct the commissioner of crown lands to cause roads to be laid out through any tracts of crown lands suitable for settlement, and to be opened in such places and to such extent as the governor in council may deem expedient, and may direct the expense of such roads to be paid out of the revenues of the crown land office.

Governor may direct commissioner to lay out roads.

Expense, how provided.

13. If at the time of any application for land there was any dwelling house on the lands in which any person other than the applicant then and for a year previously had continually resided, or in case five acres at least of the land had been cleared or cultivated during such person's actual possession, and had been for at least one year in his constant use, then unless such facts shall have been communicated to the commissioner before the passing of the grant, the governor in council at any time within two years from the passing thereof may, if it shall appear proper so to do upon the report of the commissioner of crown land setting forth the facts, declare the grant to be vacated; and the same shall thereupon become void, and the party in possession shall thereupon cease to have any interest in said land which may be granted to any applicant as if it had never been previously granted.

When grants may be declared void.

14. It shall be in the discretion of the governor in council to decide upon all questions of the temporary occupation of crown lands of a shorter period than in the last clauses, and their decision shall be binding on all parties who claim such possession, upon their being notified previous to such decision in time to enable them to assert their claim.

Governor in council to decide questions of occupancy

15. The governor in council may from time to time lease any lands at such price and for such tenure, time or use, either as regards the land or timber, as may be deemed expedient.

Governor in council may lease.

CHAP. 27.

Extent of grants.

Indian reserves vested in commissioners.

Chainmen sworn.

Surveyor may trace township line.

16. No grants shall pass exceeding five hundred acres unless with the special sanction of the governor in council.

17. All lands reserved for the indians are hereby vested in the commissioner of crown lands for the purpose of conveying the same as directed under the act concerning indian reserves.

18. All surveyors appointed by the commissioner of crown lands as his deputies shall administer an oath to the chainmen before they proceed upon any survey, that they will well and truly perform the service according to the best of their skill and judgment under the directions they shall receive from such deputy surveyors.

19. Any deputy surveyor when engaged in the duties of his profession may pass over, measure along, trace, and ascertain the bearing of any township line or the line of any grant or other governing or side line, and for such purposes with his assistants pass over the lands of any person whomsoever, doing no actual damage to such lands; and no action shall lie against such surveyor or his assistants for any act done under this section.

CHAPTER 27.

OF TRESPASSES TO CROWN PROPERTY.

No person to cut wood, open mines, &c. without license.

Penalty.

Prosecution, how conducted, &c.

Sheriffs chief surveyors, &c., empowered to protect crown property.

1. No person shall cut down or remove any trees or wood of any description on any crown lands, or open any mine or dig or raise any minerals belonging to the crown, or remove, use, injure, or destroy any trees, wood, lumber, or minerals, being crown property, without license from the governor or other legal authority, under the penalty of not less than eight dollars or more than eighty dollars for each offence, in addition to the value of any such trees, lumber, wood, or minerals, which shall have been cut down, raised or removed, and in addition to any damages committed on the land of the crown—the amount of which value and damages shall be found by the jury. The prosecution may be in the name of the queen, and on conviction the court shall determine the amount of penalty, and judgment shall pass for such penalty, and also for the value and damages aforesaid, and costs of suit.

2. The sheriff and the chief surveyor of each county, and such other person as the governor in council may see fit to appoint, are severally empowered and required vigilantly to protect the lands, timber and minerals, belonging to the crown in their respective counties, and to prevent encroachments and trespasses on the lands and mines of

the crown, and the unlawful removal of trees, timber, CHAP. 27.
lumber and minerals of the crown.

3. It shall be their duty, respectively, to seize trees and wood illegally cut, and the lumber made thereout and minerals illegally raised on the lands of the crown in their respective counties wherever the same may be found, and also to follow and seize the same in any other county to which they may have been removed; and also to seize in their respective counties, trees, timber, logs and lumber of the crown illegally cut or made, and minerals of the crown illegally raised in any other county, and removed into their said counties; and they shall have power to use all suitable and necessary means for guarding the same until condemnation, and to authorise persons to act in assistance of and under them.

Their duties,
powers, &c.

4. Immediately after seizure the seizing officer shall report the facts to the commissioner of crown lands, and shall obey his instructions as to further proceedings.

Proceedings
after seizure.

5. If any one or more of the parties concerned in cutting or raising or in removing or having in possession the property seized shall be known, a justice of the peace either of the county where the property seized was cut or raised or where it was seized shall on the applications of any of the said officers or persons acting by authority of the commissioner of crown lands, issue a notice in the form in schedule A against any one or more of the parties so known, and service on any one or more of them personally, or by leaving a copy of the notice at his or their last place of abode, shall be sufficient to bring on a trial and for the condemnation of the property. If the parties be not known a copy of the notice shall be posted on the court house door or in some other public place at least ten days before trial. Should no claim be made at the time and place mentioned in the notice, the property shall be thereupon forfeited, and in case of claim two justices shall then and there or at some other adjourned time and place hear evidence and adjudicate, and either condemn the property or order it to be released with costs.

Proceedings
when parties
concerned in
trespass are
known.

Proceedings
when parties
are not known.

6. The sentence of condemnation may be in the form in schedule B, and a copy thereof certified by one of the justices shall be delivered to the officer or person who seized the property, who shall report the facts to the commissioner of crown lands, and shall sell or otherwise dispose of the property as he may direct.

Sentence of
condemnation
—form of—pro-
ceedings there-
under.

7. In case of sale the gross proceeds shall be forthwith remitted to the commissioner of crown lands, who shall pay the same to the receiver general, who, after the charges shall have been approved by the financial secretary, shall pay the necessary expenses for guarding and preserving the property, the usual costs to the justices and witnesses and other necessary expenses and shall then pay one half

Disposal of pro-
ceeds in case of
sale.

CHAP. 27. the nett proceeds to the officer or persons aforesaid who seized and prosecuted to condemnation the said property. When from any cause the property seized shall not realize an adequate remuneration, the commissioner of crown lands may with the approval of the governor, in council, make such adequate compensation to the seizing officers and persons employed by them, and the witnesses, as under the circumstances may be proper.

When property does not realize enough to cover expenses.

Appeal—proceedings under &c.

8. An appeal may be had from the judgment of the justices to the supreme court. If the claimant be the appellant he shall make the affidavit and give the security as required in cases of appeal. The appeal shall not stay the sale, and if determined in favor of the claimant he shall be entitled to the property if not sold, or to the gross proceeds if sold, and his costs to be paid by the commissioner of crown lands and charged in his account.

Penalty for obstructing officers removing property, &c.

9. Any person who shall assault or obstruct any officer in the execution of his duty under this chapter, or any person in his aid, or who shall wilfully remove, cut, injure, convert, or set loose anything seized as aforesaid, shall pay a fine to the queen not exceeding four hundred dollars nor less than eight dollars, at the discretion of the court where prosecuted, and if not paid after conviction such person shall be imprisoned in the county jail for a period not exceeding one year, nor less than ten days, at the like discretion.

Privileges of persons impleaded for seizure under this act as regards pleadings, costs damages, &c.

10. Any person impleaded for seizure or prosecution under this chapter may plead this chapter, and give the special matters in evidence. And if the judge shall certify probable cause of seizure or prosecution, the claimant shall not recover any costs, nor shall the person who made the seizure be liable to any indictment or suit on account thereof; and if any suit or prosecution be brought against any person on account of such seizure and judgment shall be given against him, and the judge or court shall certify that there was probable cause for the seizure, then the plaintiff, besides the thing seized or its value if sold as aforesaid, shall not recover more than four cents damages nor any costs of suit, nor shall the defendant be fined more than twenty cents. But a party whose property may have been seized may, notwithstanding such certificate of probable cause, take possession of such property if the same shall not have been sold or disposed of—or if sold or disposed of, may recover the actual value thereof from the seizing officers, if the same shall not be paid within one month after demand on him in writing, setting forth the particulars and amount of such claim.

Actions, where brought.

11. All actions and suits brought for a violation of the provisions of this chapter shall be brought in the county where the offence was committed.

SCHEDULE.

CHAP. 28.

A.

Whereas a quantity of [*describe the articles*] have been seized as crown property, illegally obtained,

These are to give notice that two justices of the peace will attend on the — day of — at — o'clock in the — noon at — to hear cause why the same should not be declared to be the property of the crown.

Given under my hand and seal at — this — day of — A. D. 18—.

A. B., J. P.

B.

Be it remembered that [*describe the property*] having been seized as crown property illegally obtained, and prosecuted under the provisions of the chapter for protection of crown property, the same are hereby adjudged and declared to be the property of the crown, pursuant to the said chapter.

Given under our hands and seals at — this — day of — A. D., 18—.

A. B. (seal.)

C. D. (seal.)

CHAPTER 28.

OF NAVAL PROPERTY.

1. All messuages, lands, tenements, and hereditaments, erections, buildings, and property whatever which have been conveyed to or are vested in any person or persons, or are held or in any manner occupied by or in the name of any person or persons in trust for her majesty or her royal predecessors and her or their heirs or successors for the use of the naval service of the said united kingdom, or of any of the departments of or belonging to the said naval service by whatever mode of conveyance or by whatever title or for whatever estate or interest therein, the same shall have been conveyed or be vested, held or occupied, together with the rights, members, easements, and appurtenances to the same respectively belonging, shall be and become and remain and continue vested in the lord high admiral of the said united kingdom, or the commissioners for executing the office of lord high admiral aforesaid for the time being, according to the respective nature and quality of the said messuages, lands, tenements and hereditaments, and the several estates and interests of and

Property held for the naval service to be vested in lord high admiral or commissioners for time being.

CHAP. 28. in the same respectively, in trust for her majesty, her heirs and successors, for the public service.

Also lands subsequently purchased.

2. From and after the purchase and conveyance, grant or demise thereof, all other messuages, lands, tenements, and hereditaments which shall at any time or times hereafter be purchased, taken, held, or occupied by the lord high admiral or the commissioners for executing the office of lord high admiral aforesaid for the time being, or by any person or persons by his or their order for the naval service of the said united kingdom, or of any of the departments of or belonging to the said naval service, and all erections and buildings which shall then or may be thereafter erected or built thereon, with the rights, members, easements and appurtenances to the same respectively belonging, shall in like manner be and become and remain and continue vested in the lord high admiral of the said united kingdom, or the commissioners for executing the office of lord high admiral aforesaid for the time being and his or their successors in the said office, according to the respective nature and quality of the said messuages, lands, tenements and hereditaments, and the several estates and interests of and in the same respectively, in trust as aforesaid.

In case of death removal, &c. to be vested in successors.

3. Upon the death, resignation, or removal of the present commissioners for executing the office of lord high admiral of the said united kingdom, or of any of them, or of any future such commissioners, or of any lord high admiral of the said united kingdom, all such messuages, lands, tenements, and hereditaments respectively shall become vested in and be held by the succeeding commissioners for executing the office of lord high admiral aforesaid, or the lord high admiral aforesaid, as the case may be, and so in perpetual succession, according to the respective nature and quality of the said messuages, lands, tenements, and hereditaments, and the several estates and interests of and in the same respectively, in trust as aforesaid.

Titles of commissioners to be used in deeds, &c.

4. In all deeds, conveyances, leases, contracts, and other instruments touching any estate, property, matter, or thing relating to the naval service of the said united kingdom, or to any department under the control of the commissioners for executing the office of lord high admiral aforesaid, or whereto they or any of them shall be parties, it shall be sufficient to describe them generally by the style and title of "the commissioners for executing the office of lord high admiral of the united kingdom of Great Britain and Ireland," without expressing their names, and all such deeds, conveyances, leases, contracts, and other instruments, wherein the said commissioners shall be so described, and the execution or signature thereof by any two of them, shall be as valid and effectual to all intents and

purposes as if they or any of them had been expressly named therein and had executed or signed the same. CHAP. 28.

5. It shall and may be lawful for the commissioners for executing the office of lord high admiral aforesaid for the time being, or any two or more of them, or the lord high admiral aforesaid, to sell, exchange, or in any manner dispose of or let, or demise any of the messuages, lands, tenements, and hereditaments respectively which shall be vested in them under or by virtue of this chapter, with their respective appurtenances, either by public auction or private contract, and in due form of law to convey, surrender, assign, or make over or to grant or demise the same respectively, as the case may require, to any person or persons who shall be willing to purchase or take the same respectively, and also to do any other act, matter or thing in relation to any such messuages, lands, tenements, and hereditaments which they or he shall deem beneficial for the public service in relation thereto or for the better management thereof, which might be done by any person or persons having a like interest in any such messuages, lands, tenements, or hereditaments.

Powers of commissioners, &c., to sell, lease, &c.

6. It shall be lawful for the said commissioners for executing the office of lord high admiral aforesaid for the time being, or the lord high admiral aforesaid for the time being, and they are hereby authorized and empowered, to bring, prosecute, and maintain any action, suit, or other proceeding at law or in equity, for recovering possession of any messuages, lands, tenements, or hereditaments, by this chapter vested in them or him as aforesaid, and to distrain or sue for any arrears of rent which shall have or shall become due for or in respect thereof, under any demise from the said commissioners or lord high admiral, or any person or persons on their or his behalf, or on behalf of her majesty, and also to bring, prosecute, or maintain or to defend any other action or suit in respect of or in relation to the said messuages, lands, tenements or hereditaments, or any trespass or encroachment committed thereon, or damage or injury done thereto; and that in every such action or suit the said commissioners shall be called "the commissioners for executing the office of lord high admiral of Great Britain and Ireland," without naming them; and no such action or suit shall abate, by the death, resignation, or removal of such commissioners, or any of them, or of such lord high admiral, any law, custom, or usage to the contrary notwithstanding: and the said commissioners or lord high admiral shall be entitled to recover costs for and on behalf of her majesty where judgment shall be given for the crown, and shall be liable to pay costs where judgment shall be given against the crown, in any such action, suit, or other proceeding in like manner, and subject to the

Commissioners &c., may prosecute and defend actions.

Action not to abate on death.

May recover and be liable to pay costs.

CHAP. 29. same rules and provisions as though such action, suit, or other proceeding had been had between subject and subject.

TITLE VII.

OF THE NATIONAL DEFENCE.

CHAPTER 29.

OF THE MILITIA.

OF CLASSIFICATION AND ENROLMENT.

Commander in chief.

Persons to be enrolled.

How divided.

First class.

Second class.

Old commissioned officers may be unattached.

Unattached officers liable for duty.

Not to apply to second class in peace.

Assembly for enrolment.

1. The governor of this province is constituted the commander-in-chief of all the local forces thereof; and every man of the age of sixteen, and not over sixty years of years, except clergymen, members of the executive council, judges of the supreme court, and judge of the court of vice-admiralty, shall be enrolled in the militia.

2. The militia shall be divided into first and second class; the first class to be men from sixteen to forty-five years of age and the second class to be men from forty-five years of age to sixty; the first class shall be the first for training or service, and the second class shall not be called out in the time of peace, but shall be a reserve in time of war.

3. Commissioned officers over sixty years of age may be relieved from further service in time of peace and be placed on the unattached list, to come in with the second class men should their services be required in war; and officers after twenty-one years service shall be entitled to promotion to the next superior grade on the unattached list, to come in with the reserve on the appointment of the commander-in-chief.

4. Unattached officers under sixty years of age shall be liable to be called upon for duty in the counties where they reside under the penalty of losing their commissions on refusal to perform service. No officer under forty-five years of age shall go on the unattached list.

5. Unless otherwise specially expressed, no part of this chapter shall apply to the second class of militia in time of peace.

6. The commander-in-chief may make orders for the assembling of each company once in each year for enrolment, and any man neglecting to attend for that purpose after receiving due notice, without special cause shewn to the commander-in-chief, shall forfeit two dollars.

7. If any man shall not enrol himself and shall in consequence be absent from any muster, he shall be liable to the fine for non-attendance at such muster, although he shall not have been warned to attend muster. CHAP. 29.
If not enrolled liable to fine though not warned.

8. If any difference shall arise between the captain and any man concerning his age, it shall be incumbent on the man to prove his age. In case of difference, man to prove age.

9. Any man who shall have moved out of the limits of his company shall within ten days thereafter give in his name, age and place of residence to the captain of the district into which he shall have removed, or to the person appointed by the captain to command and enrol the squad division within which he shall reside, for the purpose of being enrolled therein, under a penalty of two dollars. Removal from limits of company.

10. When any person has ceased to hold a commission he shall be liable to perform militia service in the ranks in the reserve or the first class, according to his age. On commission ceasing, liable to serve in the ranks.

11. Any officer or non-commissioned officer who shall omit to perform enrolment duty when ordered to do so by his commanding officer, according to instructions received from headquarters, shall be subject to a fine of two dollars. Officer's penalty for not enrolling.

OF THE ORGANIZATION OF REGIMENTS AND SUBORDINATE SUB-DIVISIONS, AND REGULATIONS FOR DISTRIBUTING AND FACILITATING THE PERFORMANCE OF MILITIA DUTY IN TIME OF PEACE, AND OF TRAINING AND DISCIPLINE.

12. The militia in each county shall be formed into regiments, the regiments shall be divided into companies, and the companies shall be divided into squads. Regiments, companies, squads.

13. Regimental districts shall be determined by the lieutenant colonels in each county, company divisions by the lieutenant colonel of and captains in each regiment, and squad divisions by captains of companies, all subject to the orders and approval of the commander-in-chief. Districts, &c. how determined.

14. The commander-in-chief shall appoint commissioned officers, adjutants and commissioned regimental staff, and make regulations for their attendance at drill and their examination for appointment and promotion. Militia regiments failing to organize or train may be called out for muster or training under officers or non-commissioned officers of contiguous or other districts at the discretion of the commander-in-chief, and the officers so employed shall be paid four dollars a day and non-commissioned officers two dollars, to be levied by assessment on the regimental district. Appointment of officers, &c.

Regiments failing to organise, &c., proceedings.

15. Adjutants shall be divided into first and second class; the latter to be designated acting adjutants and the former adjutants. Adjutants.

16. Adjutants shall be entitled to receive forty dollars per annum and acting adjutants twenty dollars, to be Adjutant's pay, how drawn, &c.

CHAP. 29. drawn from the provincial treasury on certificate from the commanding officers of regiments to which adjutants of either class are attached, that they have faithfully performed the respective duties required of them; but no adjutant shall receive any pay or allowances until he is certified by the adjutant general of militia that all the returns of his regiment are in up to date; and adjutants behind hand in periodical returns shall forfeit their pay for the year unless otherwise ordered by the commander-in-chief.

Forfeiture of pay.

Adjutants, duties of.

17. Under the orders of their commanding officers, adjutants shall attend to field duties, the enrolment and organization of their regiments, and such correspondence and returns as they may be commanded to conduct.

Acting Adjutants, duties of.

18. Acting adjutants shall attend to the acquirement of field duties on opportunity being afforded to them, and shall conduct all the other duties required from adjutants until qualified as field adjutants, when they rank as first class on approval.

Lt. Colonel may appoint acting adjutant.

19. The lieutenant colonels may appoint acting adjutants.

How promoted, removed, &c.

20. No acting adjutant not being qualified shall stand in the way of the promotion to the first class adjutancy of any officer who is qualified and willing to take the duty; and adjutants of either class may, on the report of an inspecting field officer or the commanding officer, be removed or superceded by order of the commander-in-chief for incompetency or neglect of duty. First class adjutants detailed by headquarters for training at outposts, being beyond five miles from their place of residence, shall be entitled to one dollar fifty cents per diem; but shall not claim this as additional allowance to that under section fourteen when training in any other regimental district not being their own.

Acting officers how appointed.

21. Lieutenant colonels may appoint officers with acting rank, who, pending the pleasure of the commander-in-chief, shall have the power and authority of their rank, and shall be subject to the same penalties as commissioned officers for every breach of duty.

Non-commissioned officers, how appointed.

22. Lieutenant colonels shall appoint sergeant-majors, quartermaster-sergeants, and other regimental non-commissioned staff not attached to companies. They shall also appoint the non-commissioned officers of companies on the recommendation of their respective captains.

Complement of officers.

23. Every company of not more than sixty men shall have a captain, two subalterns, a color sergeant, and a sergeant and a corporal to every twenty men; larger companies may have an additional subaltern.

Non-commissioned officers; penalty for refusing to serve as such.

24. Any person refusing to serve as a non-commissioned officer shall be fined in a sum not less than ten and not more than twenty dollars, half to be paid to a substi-

tute and half to the regimental fund, but shall not be subject to a fine for any subsequent like refusal within five years; but this section shall not apply compulsorily to effective volunteers.

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Not to apply to effective volunteers.

25. The commander-in-chief may organize detached companies in remote districts and may make regulations for their enrolment, training and discipline until such time as it may be expedient to consolidate them into battalions, and may attach them to other battalions as detachments, or put them under the separate command of field-officers or captains, and as far as practicable they shall be subject to general regulations and the provisions of this chapter.

Detached companies may be organized.

26. The commander-in-chief may organize militia artillery and make regulations for them.

Artillery.

27. Colored corps shall be under the special regulation of the commander-in-chief, but in the terms of this act; and the colored population shall be enrolled and be subject to draft and service in the proportion laid down in this chapter.

Colored corps.

28. The commander-in-chief may appoint officers to inspect and command all or any of the regiments of militia throughout the province; and such officers when commissioned and published in general orders to the militia, shall be obeyed in all things lawful by all persons who shall be so placed under their respective commands.

Commander in chief may appoint officers to inspect militia.

29. The commander-in-chief may call out the militia for any number not to exceed twenty-eight days drill in each year for squad, company or battalion training as he shall order; but no previous drill performed by officers or non-commissioned officers shall exempt them from such squad, company or battalion training, and no company or battalion training shall exceed eight days in any year. In the case of men having to make up drill for legitimate absence, squad drill shall count the same as battalion or company drill.

Commander in chief may call out militia for drill; number of days, &c.

30. Officers and non-commissioned officers training when their men are called out may count their days drill on any subsequent officers or non-commissioned officers training, being ordered within the year.

How computed.

Officers' drill: how computed.

31. No drill shall count unless ordered from headquarters by general regulations or express orders or sanction, nor unless proper diaries are sent in and approved of at headquarters.

Drill must be ordered from head quarters and diaries sent in.

32. The commander-in-chief may cause commissioned officers to be examined at any time by boards or officers by him appointed, in order to test their military qualifications for the service.

Examination of officers.

33. No man shall be required to attend squad or company drill for more than two hours in one day, nor to travel to attend squad drill more than four miles, nor to attend company drill more than twelve miles, nor battalion muster or drill more than twenty miles.

Duration of drill.

Travel.

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Penalties.

Colonels for not ordering drill, &c.

Captains for disobedience.

Squad commander for neglect.

Penalty for not attending squad drill.

Penalty for misbehaviour on duty.

Warrant.

Penalty for refusing to escort.

Sheriff for refusing to receive.

Payment of escort by offender.

Punishment for non-payment.

34. Every colonel who shall not give the necessary orders for the assembling of his regiment as required by law and general orders, for enrolment, muster or training, shall forfeit eighty dollars; and every captain who shall not obey the orders of his superior officer in this respect shall forfeit twenty dollars; and every squad commander who shall not obey the orders of his superior officer for the assembling and training of his squad, two dollars for each neglect.

35. Every person who shall not attend squad drill and shall not have a reasonable excuse to be adjudged of by his captain shall be fined in a sum not exceeding one dollar.

36. If any man shall misbehave at any meeting, or whilst engaged in militia duty, the commanding officer may impose a fine of not less than one or not more than three dollars, and on non-payment shall send him to jail under the following warrant, there to remain until he pays the costs and fine; his imprisonment not to exceed three days:

“To the sheriff or the keeper of the jail for the county of ———.

“You are hereby required to receive C. D., of my ———, who was guilty of [*state offence*,] on the ——— day of ———, while engaged in militia duty under my command, and him closely confine in your jail for the space of ——— from the date hereof, [*time of his being delivered into your custody*,] and at the expiration thereof, him, the said C. D., to release from your custody in said jail, on payment of your fees, and for which this shall be your sufficient warrant.

Given under my hand this ——— day of ———, A. D. 186—.”

(Signed)

A. B.

[*Here insert rank and command.*]

37. If any non-commissioned officer, ordered to escort such man to jail, shall not do so, he shall be subject to a fine of eight dollars, and be liable to be reduced to the ranks; and any private who shall neglect to perform such duty, two dollars; and any sheriff or jailor who shall refuse to receive and detain any person for the time specified in the warrant, shall be subject to a fine of twenty dollars.

38. Each person of the escort shall receive five cents permile for conveying the offender to jail, going and returning, to be paid by the offender before he shall be discharged; and if he does not pay the same, he shall be detained in jail twenty-four hours extra for every dollar of the amount, in which case the quarter master shall pay the escort the fee out of the fines.

39. If any person shall knowingly interrupt militia men when on duty, the commanding officer present may impose upon every such person a fine not to exceed two dollars for each offence, and may issue his warrant to apprehend such person, and for collection of such fine as provided for in section thirty-six. CHAP. 29.

Interrupting men on duty, penalty.

40. Any person interrupting any muster or drill authorized by the commander-in-chief, on conviction before a justice of the peace shall for every such offence be fined two dollars.

Interrupting drill.

41. Any militia man being drunk when on parade or duty may be confined by the verbal order of the senior officer or non-commissioned officer present, until the dismissal of the men; and on conviction thereof before a justice, shall for every such offence be fined in a sum not exceeding two dollars. Any person who shall sell or introduce any intoxicating drink on any parade, practice or exercise ground, or adjacent thereto, shall be fined in a sum of not less than two nor more than four dollars, and the liquor may be spilled on the ground by any commissioned or non-commissioned officers.

Penalty for being drunk.

For selling liquor on parade grounds.

Liquor to be destroyed.

42. Any man using mutinous or insulting language or gestures to his superior officer on parade or duty, or interrupting any duty or drill by blasphemous or obscene expressions, shall be liable to the penalties prescribed in section thirty-six, to be collected as therein provided, or by a prosecution therefor before a justice of the peace, under the provisions of chapter one of the revised statutes.

Using mutinous or improper language.

43. Any man who upon three days notice shall not attend any company or battalion parade, for muster, enrolment or drill, for the first offence shall pay two dollars; for the second offence three dollars; and for every subsequent offence within the year four dollars; and every man refusing to perform the duty required of him, or falling out without the permission of the senior officer on parade, shall pay not less than one nor more than four dollars; and should he quit the parade without leave, he shall be liable to both penalties; and any man fined for absence on account of recorded contumacy, shall be liable to make up duty or drill under the same penalties as if he had not been absent and fined or punished; provided that this section shall not extend to those who have paid fines in full, as an acknowledged commutation of duty.

Penalty for absence from company drill,

Refusing duty, or falling out without leave, penalty, &c.

When fined for contumacy liable to make up drills.

Proviso.

OF MUSTERS, BOARDS OF APPEAL, EXEMPTIONS, ETC.

44. The colonel shall form boards of officers to hear appeals from fines for not attending at muster or duty, to consist of one field officer and two captains, or of two captains and three subalterns, or of one captain and four subalterns; and shall, by regimental order, appoint a day for the meeting, not to be longer than one hundred and twenty days after the imposition of such fine, and every captain shall have six days notice thereof.

Boards of appeal; by whom and how formed.

Time of holding.

Notice to captain.

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Notice to person fined.

45. The captain shall cause every person fined for non-attendance to be notified, either personally or by writing left at his last place of abode, that at a certain time, the same not to be less than three days after such notice, and at a place therein to be mentioned, a board of officers will hear appeals.

Oath to be administered to members.

46. The board of officers before entering on duty shall take and subscribe the following oath, which shall be administered by the senior officer to the other members, and afterwards by any sworn member to the senior officer.

Form of oath.

I, ———, do swear that I will well and truly investigate and determine the causes brought before this board without partiality, favor or affection, and a true judgment give according to evidence; and I will not at any time whatsoever disclose or discover the vote or opinion of any particular member of this board unless required to give evidence thereof as a witness by a court of justice or a court martial in due course of law. So help me God.

Proceedings of board how conducted.

All witnesses shall be examined on oath, and the proceedings of the board and the evidence shall be taken down in writing, and transmitted to the commanding officer of the regiment after the conclusion of proceedings and signature by the president; and the commanding officer shall carefully examine and revise the proceedings, annexing his signature and his approval or disapproval, and his remarks in case of the latter; and the written proceedings of boards of appeal shall be evidence before other courts. Parties who have incurred a penalty which comes within the jurisdiction of the board of appeal, and who have had due notice of the sitting of such board and shall not attend thereat personally or by an agent, shall not be permitted in any subsequent prosecution for the recovery of any fine to allege as a defence or in mitigation of such fine anything which should properly have come within the consideration of such board, and the decision of the board in all cases within its jurisdiction shall be final and conclusive.

Decision to be final.

No pay or allowance.

47. Boards of appeal shall not be entitled to any pay or allowances.

Board may remit fine in certain cases.

48. The board may remit any fine or any portion of a fine on proof of sickness of the man or one of his family, requiring his attendance, or of unavoidable necessity or accident, really preventing his attendance at muster or duty, or for the want of due notice to attend.

Schedule of fines.

49. All fines confirmed or remitted by the board shall be certified in a schedule to be signed by the president.

Notice of musters, how long, &c.

50. Every man shall receive at least three days notice of the musters at which he shall be required to attend, to be given to him by any commissioned or non-commissioned officer, or under the written orders of the captain by any private, or if he cannot be found to be left at his

abode, but in the latter case if the man shall not receive the notice he may prove his ignorance thereof to the board of appeal; but a warning suppressed by any third party shall be taken as if the warning was regularly given, and any man making a vexatious, trivial, or unfounded appeal, shall pay double penalties at the discretion of the board.

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Suppressed
warning.

51. Militia men late for muster, drill, or parade, but reporting themselves personally within thirty minutes after roll call, shall be subject to half fines, and to make up duty when required within the year as directed by the commanding officer of the regiment, or his orders.

Being late for
drill, to be sub-
ject to half
fines, &c.

52. The commanding officer at any muster may name any other day or days for reassembling at any kind of muster, and his order thus given shall be a notice to every man who shall have been notified of the first day of meeting, or who shall not have been enrolled.

Orders given at
musters to be
notice.

53. Temporary absentees, on account of transient absence, sickness, or any other cause, on return or recovery shall be liable to make up training or duty within the year, unless in the case of absentees they can produce certificates from commanding officers that they have performed the required annual duty in the district of some other regiment; and pilots and sea-faring men may be called on under this section.

Temporary
absentees to
make up drill.

54. The crews of vessels about to proceed to sea, if warned for militia duty, shall not be liable to fine on account of sailing.

Crews of ves-
sels.

55. When a captain shall accept of an excuse for non-attendance at muster, he shall enter it in his company's records, and if required by the colonel, make a written report thereof, and for neglecting to do either shall be liable to a fine not exceeding ten dollars.

Excuse for non-
attendance.

56. The colonel shall once in every year, and oftener if he shall think fit, require the officers to meet at such time and place as he shall appoint, to confer with him for the better regulations of their companies, for establishing the limits of the company districts, for appropriating fines under regulations, and making such rules as may be deemed proper for military dress and discipline. But all these proceedings shall be subject to the approval of the commander-in-chief, unless they are in accordance with standing regulations not requiring reference to headquarters.

Meetings of
officers.

57. If any officer shall neglect to attend any court, board, or meeting ordered by the colonel without reasonable excuse, he shall be liable to a fine, if a field officer, of twenty dollars; if a captain, twelve dollars; and if a subaltern, eight dollars; and commanding officers may appoint the next available officer.

Officer's pen-
alty for not at-
tending meet-
ings.

58. When any man shall complain to his captain or the senior officer of his company that by reason of sickness or

Exemptions on
account of sick-
ness, &c.

CHAP. 29. infirmity he is unable to perform the duties required, the captain or senior officer shall refer the case to the surgeon of the regiment, or in his absence to any other physician or surgeon, who shall thereupon examine him as to such sickness or infirmity, and shall upon receiving from him the fee of fifty cents, give him a certificate of the result of such examination, and if the board, or officers to be appointed by the colonel for that purpose, shall report that the man is unable to perform his duty, the colonel shall exempt him therefrom until his disability shall cease.

Fee to surgeon.
Certificate.

Permanent dis-
ability.

59. Persons permanently disabled by accident, deformity, or confirmed chronic disorder, shall be entitled to standing certificates of exemption.

Sick certi-
ficates, when
valid.

60. Sick certificates shall only be valid when signed by regularly qualified medical practitioners; and any person not being so qualified by law to practice, who shall sign a certificate for militia exemption, or any practitioner who shall knowingly give a false certificate, shall be liable to a fine of twenty dollars, to be sued for by the commanding officer of the regiment.

Penalty for
false certificate.

Penalty for re-
fusing certi-
ficate.

61. Any medical man refusing a certificate under the preceding sections, after having been paid or tendered the fee of fifty cents, shall be liable to a fine of eight dollars.

Exemptions
from muster.

62. The following persons shall be exempt from attending all musters unless they hold commissions, viz.: The members of the executive and legislative councils; the members of the house of assembly; the clerks of the executive and legislative councils and house of assembly; the judges of the supreme court and court of vice-admiralty; clergymen, sheriffs, coroners, the commissioner of crown lands and the subordinates in his office; inspector of mines; the gold commissioner and persons employed in his department; the principal and professors of the normal school; officers of the customs; officers of the colonial revenue; all clerks, storekeepers, mechanics, laborers, and others employed in the civil and military departments of the army and navy; ferrymen and toll bridge officers; the chief railway commissioner and the persons employed in his department; telegraph operators; the postmaster general and clerks in his office, postmasters and all mail carriers; engine-men, axemen and all fire-wardens and firemen; quakers certified by their society, and all professors of colleges, teachers of academies, and licensed schoolmasters.

Officers and
men in uniform
and on duty,
free by rail.

63. Militia officers or volunteers in uniform and on duty and the militia staff on duty shall pass free by rail; also, militia men going to regimental muster or returning therefrom, whether in uniform or not, when attending annual regimental or company training, to be certified by the captain of the company.

64. Militia men under a pass from the captain of the company, going to and returning from duty, shall be entitled to a free passage across any ferry or toll bridge, and shall be free from arrest under civil process; and any officer arresting them shall be liable to an action for damages; and any toll bridge officer or ferryman refusing such free passage shall be liable to a fine not exceeding three dollars in each case.

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Men on duty, with pass, free from ferriage or toll.
Free from arrest.

Fine for refusal of free passage.

65. The adjutant general and the militia headquarters staff shall be exempt from serving on juries or in any civic office and from statute labor or poll tax, and the correspondence of the adjutant general's office on militia duty shall be exempt from postage.

Privileges of adjutant general and staff.

66. Effective members of volunteer corps of all ranks shall be exempt from serving on juries or in the office of constable and the performance of statute labor or poll tax, except in respect of animals of draught or assessment on property; provided they be certified by the commanding officer of the company to the clerk of the peace yearly, on or before the first of May, and the clerk of the peace shall when required give to the party exempted a certificate that his name is included in the list of exemptions; and such certificate, when produced to the surveyor of highways or commissioner of streets, shall entitle the party to the exemptions allowed him by law; and the overseers or commissioner of streets may call upon the commanding officers of any corps of volunteers to affix his list of effective subordinates at any specified public place within ten days notice once in the year, and on non-compliance with this requisition his command shall not rank as effective for the year.

Privileges of volunteers from jury duty, &c.

Certificate.

OF MILITIA RETURNS OF STRENGTH, TRAINING, AND REGIMENTAL SERVICES.

67. All returns shall be in the forms prescribed by the commander-in-chief.

Returns; form of.

68. Any officer wilfully making a false return shall be cashiered by a general court martial in time of war, or be deprived of his commission in time of peace by the commander-in-chief, who may refer cases to court martial at his discretion with or without appeal being made; when acquitted, shall reinstate the accused officer, and expenses of prosecution and defence shall be defrayed from the public funds; but in case of conviction the defendant, in addition to being cashiered, shall be liable to full costs and expenses, including all charges for the assembling and sitting of the court.

Penalty for false returns.

69. Every captain shall before the first day of November in each year, and oftener, if the colonel shall require it, make returns of the strength of his company and of

Company returns.

CHAP. 29. the arms thereof, which are to be addressed to the adjutant; and the colonel shall before the first day of December make out for and forward to the adjutant general a return of the strength of his regiment and of the arms and the amount of fines collected, and of the expenditure thereof, with vouchers.

Regimental
returns.

Penalties for
omission to
make returns.

70. Any colonel failing to make the returns prescribed by the preceding section shall forfeit a sum not exceeding forty dollars; and his adjutant shall not be entitled to any allowance for the current year, nor shall his command receive any gratuitous issues of any kind for the year next following.

Responsibility
of officers as to
returns.

71. Captains, subalterns and officers in charge of squads shall be responsible for the accuracy of squad returns of men and fines, the captain collecting them with his company returns and superintending the proper performance of duty by his subordinates, who shall be accountable to the commanding officers and the commander-in-chief for any neglect of duty on the captain's report thereof.

Adjutants;
duties of, &c.

72. The adjutants will collect from the captains all the summary company statements of strength, musters and drill, and under the order of commanding officers will compile the regimental statements in duplicate—one copy for the information of the colonel and the other through him with his signature for record in the adjutant general's office at headquarters; and the adjutants of regiments shall have access to all regimental company and squad books and documents at all times; but shall not interfere with financial matters without the express orders of the commanding officers conveyed in writing, who may desire him or any of the field officers to investigate the quartermaster's accounts, or may hold boards of officers for that purpose, consisting of not less than two captains, presided over by a field officer. Neither the adjutant nor quartermaster shall be entitled to any pay or allowances until their returns and accounts are approved of.

Financial
matters.

No returns, no
pay.

The financial returns of the year (section 69) shall be accompanied by the following certificate:—

Certificate to
adjutant to ac-
company re-
turn.

I certify that [*rank and name*] being first [*or second*] class adjutant of the regiment under my command, has performed his duties to my satisfaction, and that all the periodical returns of my command have been sent in to this date. I also certify that [*rank and name*] being quartermaster of my command, has settled all his regimental accounts of the year, and that correct abstracts of these accounts have been furnished to headquarters.

Do. to quar-
termaster.

Quartermasters
—duties, &c.

73. The quartermasters and their sergeants shall, on the information of the respective officers, or other competent regimental authorities, collect and account to commanding officers for all fines, and if necessary shall prose-

cute for the same; and shall have access at any time to any regimental company or squad records, having reference to the liability to or collection of fines; and it shall be their duty to collect all fines from the captains of companies, giving their vouchers, and countersigning the captain's book when satisfied of their correctness, and reporting any inaccuracy of records of accounts that may come under their notice to their commanding officers; and they shall collect fines due from officers direct, in the name of the commanding officer, and give vouchers for the same on receipt.

74. It shall be the duty of the quarter-master to make out the financial returns in duplicate, one copy to be forwarded by the commanding officer with his signature thereto annexed to the office of the adjutant general, and the other to be kept at the regimental headquarters, and to be at all times open to the inspecting officers, and on application to the commanding officer or the adjutant, to captains of companies, who may examine, take copies of, or make abstracts from the same, in the presence of the adjutant or any field officer.

75. Quarter-masters of disembodied regiments of militia shall give bonds to the amount of two hundred dollars, with two approved securities, for the due performance of their duties in time of peace, and shall be entitled to five per cent on all fines collected after accounting for them, and paying in the aggregate to the lieutenant colonel, who shall hold an officers meeting for final settlement once or twice in each year, when company and squad books, and all other vouchers shall be produced, examined and verified by the lieutenant colonel and the two senior officers at the meeting, with their signatures attached.

76. In embodied regiments, and during war, quarter-masters may be held to security at the discretion of the commander-in-chief, according to the amount of public property in their charge, and paymasters will be obliged to afford the same securities as are exacted in the line.

OF MILITIA COURTS IN TIME OF PEACE.

77. The commander-in-chief may assemble militia courts in accordance with the practice in the line, but no penalties not prescribed in this chapter shall be inflicted in time of peace.

78. Should it be inconvenient to assemble general courts martial of a president and twelve members, they may be formed of a president, being a field officer, and six officers not inferior in grade to the defendant. The commander-in-chief may assemble courts of enquiry, in accordance with the practice in the line.

79. Any officer guilty of conduct unbecoming the character of an officer and a gentleman, may be deprived of

CHAP. 29.

Return of, &c.

Quartermasters of disembodied regiments to give bonds.

Remuneration.

Officers meeting for settlement.

Quartermasters of embodied regiments, and during war.

Paymaster, do.

Militia courts.

Courts martial, how composed.

Courts of enquiry.

Unbecoming conduct of officers.

- CHAP. 29.** his commission by the commander-in-chief, or at the option of such officer be brought before a court martial, when if convicted he shall be reduced, and be fined not less than twenty-five dollars nor more than fifty, which shall go towards defraying the expenses of the court.
- Penalty.**
- Financial defalcation.** 80. Financial defalcation of any kind connected with the militia service shall on the information be cognizable by the ordinary courts of judicature, and commanding officers may cause such cases to be handed over to them to be dealt with according to law, and the provisions of this or any other chapter having reference to fraud.
- Criminal cases in time of peace.** 81. No court martial shall adjudicate on any criminal case in time of peace; nor shall any proceedings in any militia court bar any ulterior proceedings in any other court; and in time of peace, conviction by a civil or criminal court shall be cognizable by the commander-in-chief, who may act thereupon by depriving any officer of his commission for conduct unbecoming an officer and a gentleman.
- Prosecutors in courts martial.** 82. In courts martial the commander-in-chief may appoint prosecutors and acting judge advocates, but no complainant or party to the suit shall prosecute.
- Charges, &c. to be published.** 83. The charges, finding sentence, and revisal of all courts martial on officers, shall be published in the royal gazette; and any officer who has been on trial may call for a full copy of all proceedings, which shall be furnished to him from the place of record without charge.
- Officers on trial to have copy.**
- Officers reduced to have copies of correspondence.** 84. Any officer reduced by order of the commander-in-chief may demand full copies of all correspondence connected with his case, which shall be furnished him free of expense from the place of record.
- Pay of militia or volunteer courts.** 85. The commander-in-chief may call for vouchers, and draw upon the treasury for the sums necessary to defray the expenses of militia or volunteer courts; but no president or members of any court, nor any acting judge advocate or prosecutor, shall be entitled to more than four dollars a day, travelling expenses included, when residing more than ten miles from the place of assembly of the court, or more than two dollars a day if residing on the spot or within ten miles of it.
- How limited.**
- Witnesses fees in military courts.** 86. Witnesses fees in all military courts under this chapter shall be the same as in the supreme court. Witnesses refusing to appear before any militia or volunteer court or civil court, on being summoned for default before any civil court, shall be liable to the same penalties as if they had refused to appear before the court before which they may be summoned for non-appearance, with the same costs and expenses.
- Penalty for refusal to appear.**
- Affirmation.** 87. Persons objecting to oaths from alleged conscientious motives may, upon the president being satisfied that the objections are sincere, be put upon the affirmation which the statute prescribes for such witnesses.

88. In all proceedings under this chapter for the recovery of penalties the cases shall be cognizable by the ordinary courts of judicature, before which documentary and other evidence herein prescribed shall be valid ; there shall be no appeal to a superior court nor any charge for costs.

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Recovery of penalties.

OF THE ORGANIZATION, DISCIPLINING, AND TRAINING OF THE VOLUNTEERS.

89. The commander-in-chief may authorize the formation of artillery, rifle and cavalry companies, to be composed of men between the ages of sixteen and forty-five, in the several regiments or battalions, and may frame regulations for them.

Commander-in-chief may authorize formation of companies, &c.

90. Volunteer corps shall have their districts prescribed by their commanding officer ; two or more companies with the same headquarters may be included in the same district ; the city of Halifax and its suburbs, including Dartmouth, shall be one district.

Volunteer districts ; how prescribed.

91. Members of volunteer corps shall be divided into three classes—effectives, non-effectives, and honorary members. The qualifications of effectives shall from time to time be prescribed by the commander-in-chief ; but no volunteer who is not uniformed, has not taken the oath of allegiance, has not perfected himself in training as far as instruction has been offered, or shall not maintain his efficiency in training to the satisfaction of the commander-in-chief, the inspecting field officers, and his commanding officer, or shall fail to attend any inspection in uniform without leave of absence, or shall not have attended twelve days aggregate training in the year under the staff instructors or the officers of his corps inclusive, irrespective of target practice, without leave of absence or sufficient excuse to his commanding officer for the information of inspectors at headquarters—shall not be returned as an effective, or claim any exemption as an effective, or shall claim any privilege whatever as an effective volunteer. No volunteer rifle company, being under the strength of thirty-six members, exclusive of officers and non-commissioned officers, not being rank and file, shall be entitled to any privileges, exemptions, or allowances made or paid for from the public grant.

Volunteers ; how classified.

Qualification for effectives.

Strength of company, as regards privileges, &c.

92. No excuse of absence from inspecting field officers inspections shall be deemed sufficient, except on leave given by the commanding officers of volunteer corps in writing, on account of unavoidable absence from the district of the corps, or on account of sickness ; when a medical certificate must be placed in the hands of the officer commanding on parade ; and all leave given must be entered into the order books of corps.

Absence from inspections ; what sufficient excuse.

93. No commissioned officer of volunteers who shall permanently leave the district of his corps, or who shall

Officers commissions ; retention and cancellation of.

CHAP. 29. fail or cease to be effective, according to the definitions of this chapter or the military regulations from time to time laid down at headquarters, shall retain his commission; and the commander-in-chief, at his discretion, and upon authenticated military reports from inspectors, shall have power to summarily cancel the commissions of all officers, who shall not fulfil the military condition of their rank, and may call together boards of examination to be presided over by any inspecting officer or field officer of militia, to decide whether such officers have the requisite military qualifications for command and may act at discretion according to the report.

Oath of allegiance.

94. Every person enrolled in any volunteer company shall take the oath of allegiance to her majesty, which oath any officer or acting officer duly authorized by the commander-in-chief may administer.

Bye-laws in time of peace.
Fines.

95. Volunteer companies may make bye-laws for their government in time of peace and may impose fines for the breach of any such bye-laws; but no such bye-laws shall be in force until approved of by the commander-in-chief.

Fines how recovered.

96. Fines imposed under any bye-laws, and dues and liabilities incurred by any volunteer, may be sued for in the name of the commanding officer of the corps as a private debt, before one or more justices of the peace, or before the supreme court, or any other court, according to the amount claimed.

Uniform, &c.

97. The dress of volunteer companies and the horses of volunteer troops of cavalry, shall be provided at their own expense, and their uniforms and appointments shall be subject to the regulations and the approval of the commander-in-chief.

Commander-in-chief may combine volunteer companies with militia.

98. The commander-in-chief may combine the volunteer companies of any county with the militia regiments of the same, or may organize and drill them as a separate and distinct force in companies, regiments or brigades; but no volunteer corps hereafter shall be formed without the sanction and consent of the commanding officer of the militia regimental district of the proposed volunteer corps.

Formation of new companies.

Drill of volunteers how regulated.

99. The commander-in-chief may make orders for calling out the volunteer companies for drill, and may prescribe the number of days during the year on which such companies are to meet for the purpose, not being less than twelve days; and no volunteer drill or training shall count unless diaries of the particulars, in the form prescribed by the commander-in-chief, be returned by the captain or officer commanding the corps to the office of the adjutant general at headquarters, retaining a duplicate of the same at the headquarters of the corps.

Diaries.

No returns; no issues.

100. No volunteer corps shall be entitled to any issues from headquarters between returns unless the periodical returns last called for by standing orders or special

demand be sent in within ten days of the requisition from headquarters. Volunteers shall not be exempt from attending militia training in their regimental districts unless they have completed twelve days training previous to the militia of their regiment being called out, and captains are to see that all defaulters at drill turn out with the militia. Neglect or evasion of this section shall disqualify the corps as effectives for the year.

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Not exempt from militia unless, &c.

Penalty for evasion, &c.

101. The commander-in-chief may appoint courts martial or courts of enquiry of volunteers, either as general or company courts, which shall have full power and authority to enquire into any matter or subject touching the organization, discipline, or conduct of volunteers, or touching any differences or disputes between volunteer corps which may be submitted to them by the commander-in-chief; and all persons shall, when required by summons from the president of any court, be bound to attend and give testimony on any subject under enquiry, such testimony to be given in the mode practised in her majesty's regular forces, and in default of appearance shall be subject to the provisions of section eighty-seven of this chapter.

Courts martial, and of enquiry.

102. Complaints relative to the misconduct of any volunteer while on duty or on parade, may, when submitted to any such court by the commander-in-chief, be investigated before any such courts; and in case of such misconduct being proved, the court may recommend the expulsion of the offender, or may impose a fine not to exceed ten dollars.

Misconduct on duty.

Punishment

103. The recommendation or sentence of any such court if confirmed by the commander-in-chief, shall be final.

Sentence.

104. The commander-in-chief may constitute militia and volunteer courts of judicature or enquiry, according to local and numerical convenience, and may direct their proceedings to be carried on on oath, and may cause them to investigate and give their opinion, or to decide, subject to his revisal. All their proceedings shall be in writing and be signed by the president of the courts, and their sentences or opinions, and the revisal shall be published in the royal gazette.

Courts; how constituted.

Proceedings of

105. On the resignation of any officer having charge of arms or other government property, the commander-in-chief may give up or return the bond given by such officer, whenever he is satisfied that the terms thereof have been complied with; and officers receiving or giving over government property shall exchange mutual vouchers to be sent into headquarters.

Cancelling of bond on resignation of officer

106. Mutual military debts, in militia or volunteer corps, may be recovered as common debts.

Recovery of mutual debts.

CHAP. 29.

OF THE MILITIA STAFF IN TIME OF PEACE.

Military staff
to be under con-
trol of comman-
der-in-chief.

Joint command
of imperial and
militia forces.

Officers on pay
may be reduced
by commander-
in-chief for ne-
glect, &c.

Authorities not
responsible for
debt of staff.

Discipline, and
exemptions of
staff same as of
the line.

Officers, &c. of
local forces
eligible for staff

Provincial go-
vernment to
pay one-third
expense of drill
room, &c. when
completed.

107. The commander-in-chief shall have the entire military command and control of the permanent militia staff of the province, and in time of peace may direct the summary discharge or reduction of any officer, non-commissioned officer or man, who may be guilty of misconduct whilst receiving any pay or remuneration; and this rule shall extend to all regimental staff, who shall be in the receipt of any pay, allowances or emoluments. Militia staff officers shall not assume executive command on parade without the express orders or request of their senior officer in actual command of the parade; and no officer of militia, staff or other, shall assume command of forces composed of imperial and militia troops without the order or consent of the general or other officer in command of the imperial forces, unless in cases where there may be no imperial commissioned officer present, or there be standing or other orders issued by the officer commanding the imperial forces to the contrary.

108. The commander-in-chief may also direct the removal or reduction of any officer, non-commissioned officer or private, who may be employed in any capacity by the province on pay, for neglect of duty or inefficiency in time of peace.

109. The militia authorities at headquarters shall not be held responsible for any debts contracted by staff sergeants being permanent instructors; nor shall any stoppage or conversion of their pay be made at headquarters on account of their debts, and they shall be under the same discipline as the line, and shall have similar exemptions from arrest for small debts, unless cashiered, when they shall be liable to civil process for antecedent debt, and the substance of this section shall be published in the royal gazette, and by such other means as the commander-in-chief may direct.

110. Officers, non-commissioned officers, or men of the local forces shall be eligible for the permanent militia staff of the province on inspection, examination and approval of the commander-in-chief.

OF ARMS, ARMORIES, MILITARY STORES, BUILDINGS, GROUNDS, AND TARGET PRACTICE.

111. When any battalion, regiment, district, company, or county, shall have erected and completed an armory or drill room, in any part of this province, under the direction and with the sanction of the commander-in-chief, and shall show to the satisfaction of the commander-in-chief that such drill room or armory is completed and ready for use, and is of sufficient dimensions, one-third of the cost may

be drawn from the provincial treasury, on accounts and vouchers verified on oath being produced at the financial secretary's office. CHAP. 29.

112. The storage, conservation, and distribution of all arms, military stores, and other government property, appertaining to the local forces of the province and all issues or withdrawals of arms or stores, shall be subject to the regulations and orders of the commander-in-chief. Storage of arms &c., to be regulated by commander-in-chief.

113. Persons having charge of any government property shall be responsible for the same in full value as for ordinary debts, and receipts and records in the adjutant general's office shall be proof of possession, and recipients may, at the discretion of the commander-in-chief, be held to bond in two sureties to the full amount of the property. Until receipts of bonds persons shall be liable for loss or damage who have taken over government property as next seniors equally with the bondsmen, and may be sued singly or together with the former for recovery. Liability of persons in charge of government property.

114. Any armory, drill room, or other building, on any ground paid for or rented in whole or in part by any grant or any monies drawn from the public treasury shall, at the discretion of the commander-in-chief, be open to the occupation or use of the local forces without distinction; but this section shall not apply to volunteer armories targets or grounds rented expressly by volunteers for their own use, and for which they may receive a subsidy. Bonds.
Armory, &c. to be open to use of local forces.

115. Drill grounds on which any money has been expended by the provincial government shall be open to both militia and volunteers. Where there are no parade grounds the commanding officers shall hire them at a rent not to exceed three dollars per diem. The sum required for the payment of such rent shall be assessed by the sessions in the respective counties. Not to apply to volunteer armories, &c.
Drill grounds to be open.

116. The commander-in-chief shall approve and regulate all target practice, and the construction of butts and their repair shall be subject to the supervision of the militia staff. May be hired; rent to be assessed by sessions.
Target practice—construction of butts, &c.

117. Any two justices of the peace may suspend target practice on any range on information of danger, pending report to and enquiry by the commander-in-chief, and any person who shall after notice of such suspension use such targets, pending such enquiry, shall be fined a sum not exceeding five dollars for each offence. When target practice may be suspended by justices.

118. The governor in council may in case of any emergency provide at the expense of the province such additional number of rifles and accoutrements for the use of the militia as shall be deemed advisable. Governor in council may provide arms at expense of province.

119. Militia men of any rank receiving arms, accoutrements, or government property, may be required to give a subordinate bond to their commanding officer or captain Bonds for arms to be given.

CHAP. 29. in the following form, executed by themselves and two securities :—

Form of bond.

Know all men by these presents, that we, A B and C D, are held and firmly bound unto our sovereign lady the queen in the sum of fifty dollars, to be paid to her majesty, her heirs and successors, for which payment well and truly to be made we bind ourselves and each of us by himself, our and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated at ———, }
the ——— day of ———, A. D. 186—.

The condition of this obligation is such that if the above bounden A B shall at all times hereafter safely keep in good serviceable order and condition, and have ready to return when called for by the commanding officer of the regiment [*specifying the particular regiment to which such persons may belong,*] one rifle or [*specifying the arms and accoutrements which may have been received by such person*] which have been issued to him under the laws relating to the militia, and shall in all things perform the provisions of such laws touching such arms and accoutrements, then this obligation shall be void.

Signed, sealed, and delivered } A. B. (seal.)
in presence of } C. D. (seal.)

Arms, where deposited.

120. The officer in charge shall lodge the arms and accoutrements in a suitable place, to be delivered to his subordinates as he shall order, and every recipient shall return such arms to the place of deposit within twenty-four hours after the performance of the service for which he received the same, under a penalty of one dollar for every day's neglect, and shall produce his arms for monthly inspection under a penalty of one dollar, and for staff and field officers inspection on three days notice under a penalty of two dollars.

Inspection.

Responsibility of senior officers for arms, &c.

121. Senior officers of corps shall be primarily responsible for arms and accoutrements delivered to them, for which they shall give a receipt or bond as required from headquarters; but on the demise or resignation of any senior officer his next senior officer shall become responsible by virtue of his command until he either declines the command or sends in his bond or receipt, and he shall be empowered to exercise his authority over all the subordinate bonds and issues of the command and bring actions thereupon.

Penalty for disposing of arms, &c.

122. Every man who shall convey any arms or accoutrements out of the limits of his regiment except when on duty, or shall dispose thereof, and any person who shall receive the same, shall forfeit one hundred dollars for every musket or rifle, and two dollars for every article of accoutrement; and every person who without authority shall convey any such arms or accoutrements on board of

any vessel to carry out of the country, and any person who shall receive them for such purpose, and any person having illegal possession of any government property or not being able satisfactorily to account for such possession, shall be liable to a fine of five hundred dollars, payable one half to the informant and the other half to the use of the corps. CHAP. 29.

Penalty for illegal possession of government property.

123. The colonel when required by standing orders or specially from headquarters shall order inspections of the arms, accoutrements and government property of his command, making a return of their condition.

Inspection and return of arms, &c., by colonel.

124. Whenever required or before removing out of the limits of his company, every man shall return to the captain the arms and accoutrements he shall have received in good serviceable condition, under a penalty of twenty dollars, and shall pay the whole value of the articles in case of total loss to the commanding officer.

Arms to be returned when required.

Penalty for neglect.

125. Should any man's arms or accoutrements be in a dirty or unserviceable condition, he shall be answerable in full for cleaning, repairs and all expenses through his commanding officer to headquarters.

Arms in unserviceable condition.

126. Commanding officers shall be legally liable in full for the safety and condition of all arms as well as other public property given over to their charge or that of their subordinates, irrespective of bonds or securities, and shall be entitled to a receipt from the quartermaster general on re-delivery, and the receipts or records at headquarters shall be proof of possession unless vouchers of re-delivery can be produced.

Commanding officers liable for all arms, &c.

OF FINES AND PROCEEDINGS FOR THEIR RECOVERY.

127. All actions for anything done or authorized to be done or personally incurred under this chapter, shall be commenced within six months after the cause of action arose, and shall in time of peace be deemed and conducted as ordinary civil proceedings, subject to provisions of section forty-six of this chapter; and the defendant may plead and give this chapter and the special matter in evidence.

Limitation of actions, &c.

128. All fines unless otherwise directed when not exceeding twelve dollars shall be recovered before one justice; and when above twelve dollars, before two justices; and if payable by a militaman may be recovered in the name of the officer commanding the company; and if payable from an officer in the name of his commanding officer; and the amount in either case may be levied with costs of distress; and for want of goods the offender shall be committed to jail for the term prescribed for the offence; and if his term be not prescribed he shall be committed for two days for every dollar of the penalty; and this commutation shall be applicable to all pecuniary dues or penalties under this chapter in time of peace.

Fines, how recovered, levied, and commuted.

CHAP. 29.

Fines in city of
Halifax, how
recovered.

Expenditures
of fines.

No fees to jus-
tices.

Amendment of
process.

Account of fines

Votes for mili-
tia service to be
at disposal of
commander-in-
chief.

Accounts with
vouchers to be
rendered quar-
terly to finan-
cial secretary.

Definition of
terms.

129. Militia fines incurred within the municipal jurisdiction of the city of Halifax shall be recoverable in the city court, irrespective of amounts due and the corresponding numerical jurisdiction of magistrates.

130. All fines collected by the quarter-master shall be applied under the direction of the colonel and officers towards defraying the expenses of the regiment, including stationery and postage of regimental letters not being to headquarters.

131. No justice of the peace shall take any fee for any service performed under this chapter unless specially provided for by the same.

132. Any process for the recovery of a fine under this chapter may be amended until final judgment.

133. An account of all fines with their appropriation shall be rendered to the office of the adjutant general of militia by the colonel within three months after collection under a penalty of twenty dollars for default.

134. All amounts voted for militia service shall be placed at the disposal of the commander-in-chief for the purpose of employing staff officers and drill sergeants, or specially examined and approved appointees belonging to the local forces, on the training and drilling of the militia and militia officers, and for the encouragement and maintenance of volunteer corps,—for the storage and preservation of the arms furnished by the imperial government, and generally in such other services as may from time to time appear to the commander-in-chief necessary for the effectual organization of the local forces.

135. Accounts with vouchers for all sums expended for the militia service shall be rendered quarterly to the financial secretary, to be audited by him and laid before the committee of public accounts.

136. The following terms used in this chapter shall be construed thus :—"Commanding officers," "colonel," or "lieutenant colonel," shall mean any officer, non-commissioned officer or other person lawfully ordered, delegated or put in command of any regiment, company or squad, or smaller party of men in permanent, temporary or acting command by his superior officer, whose authority he shall have during the continuance and until the performance of the required duty; "man" or "militia man" shall mean any person enrolled in the militia; "year," unless the context and meaning be clearly to the contrary," shall mean from the first day of January to the last day of December; and "returns" shall mean all statistical information.

OF THE MILITIA IN TIME OF WAR.

Commanding
officer in time
of war.

137. The executive command in time of war is hereby vested in the officer commanding her majesty's imperial

forces in this province. Whenever the militia shall be called out for actual service in case of invasion or imminent danger thereof every officer and man belonging to it shall be subject from the time he has been ordered or drafted for actual service to the officer commanding her majesty's forces in this province, and to her majesty's regulations for the army, to the articles of war, and to the act for punishing mutiny and desertion, and to all other laws there applicable to her majesty's troops in this province, except that no militiaman shall be subject to any corporal punishment, except death or imprisonment for any contravention of such laws, and except also that the commander-in-chief may direct that any provisions of the said laws may not apply to the militia. No militiaman shall be flogged, except such punishment be commuted from the penalty of death.

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Militia when called out for actual service subject to articles of war, mutiny act, &c.

Not subject to corporal punishment except death or imprisonment.

Flogging.

138. No militiaman shall be entitled to dismissal from duty or discharge from service when on the line of march or before the enemy, notwithstanding the termination of any period of service, limited either by special agreement or by this or any other chapter.

Dismissal.

139. When on actual service, the officers, non-commissioned officers, trumpeters, drummers, fifers, buglers and privates shall be entitled to the same pay, allowances and rations as her majesty's regular troops, to be received from the day they march on actual service until dismissed by competent authority; and at the time of their dismissal they shall be allowed a number of days' pay to defray their expenses to their places of abode, according to their distances, at the rate of fifteen miles a day.

Pay, allowances, rations, &c., on actual service.

140. If any person in actual service be wounded or disabled while on duty, he shall be supported out of the public funds of the province as long as the disability shall continue.

Wounded, &c.; how supported

141. In case of the loss of any officer or man while on actual service, provision shall be made for his wife and family out of the public funds.

Death; provision for family

142. When on the line of march or escort duty, or any other service, or in camp or quarters, the governor in council may make regulations for the billeting or rationing of the militia; such regulations to assimilate as far as practicable to similar regulations for her majesty's other forces.

Billeting.

143. Captains of companies shall cause a ballot to be made of the first class for forming a roster or list, whereby the men may be called into actual service in manner following:—

Ballot for actual service; how taken

First.—Each name shall be written on a piece of paper, which shall be rolled up and put into a box or hat, and well mixed; all pieces of paper so used to be of equal size and rolled up in the same manner.

Second.—Pieces of paper of the same size, rolled up in

CHAP. 29. the same manner, to the extent of the number of men, shall be mixed together in another box or hat.

Third.—Two persons nominated by the captains, shall publicly draw all the names alternately, numbering them from one upwards as drawn, and a consecutive list of the names and numbers shall be made as the former are drawn which shall be a service roster, the first names drawn and numbered being first for service; artillery and cavalry shall be ballotted for service rosters in like manner.

Men for actual service; how furnished.

144. When the commander-in-chief shall order any number of men for actual service, they shall be furnished in as exact proportion as possible to the number of effective men; and every company or troop shall furnish its proportion from the first class, according to the roster; and every man liable to serve, unless prevented by sickness or other sufficient cause, shall go or find an approved substitute, and in default shall be liable to a penalty of forty dollars; and if the same shall not be paid, may, by the commanding officer, be imprisoned for three months, and the next man on the roster shall serve in his place, who shall have the whole of the fine (if paid) and shall go or find a substitute; but if he refuse or neglect to go, he shall be liable to the same fine and imprisonment; and the next man shall be called out, and he shall have the last mentioned fine (if paid) if he, by himself or a substitute, shall serve, and so on as each case may happen; but no man shall receive more than one fine if paid.

Man to find substitute, or penalty.

Not liable to serve twice in four years until all effectives have served.

145. If any part of the company shall be called out oftener than once in four years, no man who had served shall be liable to serve again until all the available effective men shall have served personally or by substitute.

Place on roster on removal.

146. When any man shall remove from the limits of his company to any place within the limits of another company, he shall fall in on the roster immediately before the man who has drawn the same number.

Ability of men for duty to be ascertained, &c.

147. Upon calling out any of the militia into actual service, the commander-in-chief may direct necessary measures to be adopted to ascertain the ability of every officer and man to perform his duty; and if any man shall be found unable to serve, his place shall be supplied by the colonel; and if such person shall be a substitute, the person in whose stead he is or stands, shall procure another substitute under the same penalty as for refusing to go into actual service or finding a substitute; or if the man has been originally drafted for the regiment, the colonel shall take the next man drafted for actual service in the same company, who shall go or find a substitute under the same penalty.

Militia men drafted for war deemed enlisted.

148. Militiamen drafted and notified by the commanding officer or captain to serve in war, shall be deemed to be enlisted; and any militiaman who shall not voluntarily

appear at any appointed place within twenty miles of his abode, in person or by substitute, within ninety-six hours, (any intervening Sunday, Christmas Day, or Good Friday, not included,) shall be proceeded against under the mutiny act and articles of war, notwithstanding the non-receipt of enlistment money, and the fact of being drafted shall, to all intents and purposes, be an enlistment within the meaning of the articles of war, with or without attestation or the formalities of enlistment practiced in her majesty's regular forces; and militiamen or their substitutes, if absent, shall be prosecuted as deserters. Non-commissioned officers of militia shall return to the ranks on transfer or joining an embodied corps.

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May be proceeded against under mutiny act for non-attendance.

149. The commander-in-chief may order drafts to be selected, the names returned to him, and the men to be drilled and disciplined without calling them into actual service; and may select officers to command such men, and may direct the measures to be adopted, and make such orders as may be necessary for that purpose; but the number of days of battalion training shall not exceed fifteen in one year.

Commander-in-chief may select drafts.

Number of days training, &c.

150. When the commander-in-chief shall order any number of men for actual service from any regiment or battalion they shall be drafted from the volunteer companies; and when such volunteer companies shall have been formed they shall in all cases be considered the first-class for actual service, and no draft shall be made from other than volunteer companies until the whole of such companies have been called into actual service.

Volunteers first for actual service.

151. Whenever a proportion of the militia of Halifax shall be called into actual service the colonel of the regiment to which clerks, storekeepers, mechanics or laborers belong who are employed in any department of the army and navy, may apportion the number of drafts which they ought to furnish and procure substitutes in their places on the most reasonable terms, and the expenses shall be assessed on them in proportion to their daily pay by the colonel with the assistance of two captains.

Substitutes for army and navy, clerks, &c.

Expenses; how assessed.

152. Every person assessed under the preceding section shall on notice pay the amount to the colonel, and on refusal any justice of the peace, upon complaint of the commanding officer, may issue his warrant of distress upon the offender's goods and sell the same, and for want of goods may commit him to jail until the amount assessed be paid; but any such person may procure a substitute or serve personally, and may, on receiving due notice of the duty required of him, declare such intention, but shall serve until a substitute be procured.

Collection of assessment.

153. In any district exposed to attack by water the sessions, on presentment of the grand jury, may assess the sum necessary for providing armed boats for defence,

Armed boats; how provided.

CHAP. 29. to be under the direction of the commanding officer, and when no longer necessary they may be disposed of by the sessions.

Number of men to be called out for actual service.

154. If upon any emergency arising from invasion made or threatened in this province or in the province of New Brunswick it shall be necessary to call any of the militia into actual service, the commander-in-chief may order the colonel of any regiment to furnish one hundred men for every six hundred of the first class, or the like proportion for any greater or less number, such men to be furnished either from draft of the regiment or by volunteers.

Commander-in-chief may select officers, &c.

155. The commander-in-chief may select captains and subalterns to command the men furnished under the last section and may form any of the men furnished by the different regiments into a regiment or battalion for actual service, and appoint field, staff and other officers for the same, and order such regiment or battalion into barracks or camp and adopt measures to render them efficient for actual service.

Volunteers for defence of New Brunswick.

156. The commander-in-chief may accept the voluntary service of any of the embodied militia for the defence of New Brunswick against the common enemy.

Actual service.

157. In case of invasion made or threatened, the commander-in-chief may call the militia into actual service and may order any part thereof to march from one part of the province to another.

In case of sudden attack, commanding officer may call out militia of district, &c.

158. In case of any sudden attack made or threatened when the commander-in-chief cannot be immediately consulted, the commanding officer shall, if he thinks it necessary, call out the militia of his regimental district for active service; and if any invasion or attack shall be made or threatened in any place where the officers commanding regiments in the county cannot be consulted, the militia may be called out by any officer on the spot, who shall forward a report to the commander-in-chief, notifying the danger and strength and motives of the enemy; and such officer may impress men, horses, boats and carriages, as the nature of the case may require, a reasonable compensation for which shall be made to the owners; and the governor in council on the certificate of the commanding officer and any two captains shall draw on the treasury for the amount.

Exorbitant demands.

159. Any demands under the last section considered exorbitant may be arbitrated by the next grand or special sessions of the county.

Duties regulated by rosters.

160. When any part of the militia shall be called into active service all duties, except in cases of great emergencies, shall be regulated by rosters.

Where several sons in family, one excused.

161. When there are two or more sons residing in the family of their father or mother for one year preceeding

who shall be liable to be ordered for service at the same time under this chapter one shall be excused and the first on the list shall be called. CHAP. 30.

162. If any person, aged sixty years or upwards, or any widow, shall have a son, grandson or an apprentice, on whom solely he or she shall be dependant for support, living with him or her for twelve months preceding, he shall be exempt from being ordered for service, so long as he resides in the family and contributes to the support of the same. If son sole support of widow, &c., to be excused.

163. Local duties shall be equally distributed among able-bodied men of districts; the able-bodied men of the second class of the militia shall form a local reserve under the directions of the commander-in-chief in war when they may be organized, officered, trained and disciplined by him for service in the province, and he may select the officers from the most effective ones on the unattached list, seniority of rank not giving any prior claim for employment, according to an alphabetical roster, to be kept by the captain of every company, and every person refusing to perform his term of duty shall be punished according to law. Local duties—able bodied men of second class to form local reserve.

164. When by the direction of the commander-in-chief guards shall be kept so that the local duties performed by any one man shall exceed six days or nights in one year, the commander-in-chief may pay every such man for the excess over that time, according to the rate in this act mentioned upon certificate of the colonel. Guards.

165. Every person wilfully making a false alarm shall forfeit forty dollars. False alarm.

CHAPTER 30.

OF BILLETING THE TROOPS AND MILITIA.

1. Whenever any detachment of her majesty's forces or of the militia shall be ordered to march in this province, the justices of the peace shall billet them in inns and licensed taverns, or in the houses of persons who have within one month previously kept an inn or licensed tavern; and the persons on whom they are billeted shall furnish such troops or militia with lodgings and with provisions, consisting of bread, flesh and vegetables, and the officer commanding them shall give certificates of the number of meals and nights' lodging, which shall entitle the person supplying the same to twenty-five cents for each meal, and for every nights' lodging five cents. Troops and Militia, how billeted.

CHAP. 30.

Fines for false
certificates.

Expenses how
provided for
and drawn.

Certificates un-
der first section
how payable.

Further provi-
sions for billet-
ting troops in
certain cases.

Baggage con-
veyance pro-
vided; rates of
charges.

Fines for re-
fusal to furnish
conveyance.

Fines on offi-
cers for illegal
conduct in re-
gard to convey-
ances.

2. If any militia officer shall give a false certificate he shall be cashiered by a general court martial, and shall also forfeit two hundred dollars, to be recovered in the supreme court, one half thereof to be paid to the informer and the remaining half into the treasury.

3. The governor may draw warrants on the treasury in favor of the parties entitled thereto under such certificates for all sums payable for the billeting of the militia, and also for the billeting of regular troops when on a march under a route granted by the governor on their removal from one part in the province to another; but no greater sum shall be drawn in any one year under this section than two thousand dollars.

4. The certificates of the number of meals and nights' lodging furnished to any of her majesty's troops under the first section, and for which payment is not provided under the last section, shall entitle the person who furnished the same to receive payment from the officer granting the certificate, or from the officer appointed by the commander-in-chief to pay the same.

5. Where the houses specified in the first section shall not be sufficient to billet the whole regiment or detachment, part of them may be billeted on other housekeepers in the discretion of the justices, and any person who shall refuse to receive troops or militia so billeted upon him shall forfeit twenty dollars.

6. Two justices may, upon the application of the commanding officer and upon production of a route signed by the commander-in-chief, order a suitable number of carts or waggons and horses to be furnished for conveying the baggage of the regiment or detachment, and the owners shall receive from the officer commanding the detachment at the rate of twenty cents a mile for one horse, cart and driver, to carry five hundred gross weight for twenty miles, and for every additional horse fifteen cents a mile, but the additional load for each horse shall not exceed five hundred gross weight. When ordered to halt fifty cents an hour shall be paid while the detention shall last, and the commanding officer shall make out certificates of the weights, distances, time and cause of detention, and take receipts thereon for payments.

7. Any person refusing to furnish horses and carts or waggons when ordered, without a reasonable excuse, shall forfeit eight dollars.

8. If any commanding officer shall constrain any cart to travel more than twenty miles, or shall refuse to discharge it in due time to return home, or shall overload it, either by permitting soldiers or others to ride thereon or otherwise, or shall force carts or horses from the owners thereof, he shall forfeit eight dollars.

9. No loaded cart passing from town to town, nor any horse travelling for the owner, shall be taken for the purpose of transporting baggage.

CHAP. 31.

Horses and carts exempted when actually employed.

CHAPTER 31.

OF PUBLIC FORTIFICATIONS.

1. When the commander-in-chief of her majesty's troops shall judge it necessary to erect fortifications on private property, or to apply the same for other military purposes, he shall apply to the supreme court of the county where the lands are situated, and on notice given to the owners a jury of twenty-four freeholders shall be summoned, who after being sworn shall view the premises and ascertain to whom the lands belong and the value of the land of each proprietor separately, and shall return their verdict to the supreme court in writing under the hands and seals of at least thirteen of them, which shall be filed and become a record of the court.

Private property, how appropriated for fortifications.

2. The amount of such verdict shall be paid to the respective proprietors named therein, and if any of them shall refuse to accept the same, the money shall be paid into court for their use, and such lands shall thereupon become vested in her majesty forever. If any proprietor be a minor the value of his land shall be paid to his guardian.

Value when found, how and to whom paid.

3. If the sheriff shall neglect to summon a jury he shall forfeit eighty dollars, and in case any of the jury shall not attend or shall refuse to be sworn, such offender shall forfeit twenty dollars.

Fines on sheriff and jury neglecting duty.

CHAPTER 32.

OF AN ELECTRIC TELEGRAPH FOR MILITARY PURPOSES.

1. It shall be lawful for her majesty the queen, or any officer duly authorized by her, to cause to be built and established a line of electric telegraph, to commence in the city of Halifax and extend thence through and along the province of Nova Scotia till it shall reach the boundary line dividing the said province from the province of New Brunswick.

Building of line of telegraph authorised.

CHAP. 33.

Where to be placed.

Privileges of N. S. E. Telegraph given to her majesty.

All fines, penalties, &c., for protection of telegraphs, &c., to apply to this line.

To be used for imperial and military purposes.

2. Such line may be built along the side of any public highway, street or railway, either above ground or under, provided it does not interfere with the right of travelling thereon, or the posts and wires of the Nova Scotia electric telegraph company.

3. All powers, advantages and facilities provided or given by the act to incorporate the Nova Scotia electric telegraph company, and all acts in amendment thereof, and all privileges enjoyed by that company for building and maintaining lines of electric telegraph in the province of Nova Scotia, so far as the same are or may be applicable or required for building and maintaining a line from Halifax to the boundary of New Brunswick, are hereby given and granted to her majesty or any officer duly authorized by her in that behalf, and all persons acting under him for building and maintaining said line, subject, nevertheless, to all conditions and restrictions imposed upon such company.

4. All remedies, fines, pains, penalties, and forfeitures provided by the act for incorporating the Nova Scotia electric telegraph company, and the acts in amendment thereof, passed or to be passed during the present session of the legislature, and all acts passed for the protection of electric telegraphs, for injuring, interrupting, destroying, obstructing or intermeddling with the telegraph line during or after erection, shall apply and may be enforced in the name of her majesty by information or indictment against any person or persons injuring, destroying, obstructing or intermeddling with the line hereby authorized to be constructed.

5. The line hereby authorized to be constructed shall be used for public, military and imperial purposes, and for no other services whatsoever.

TITLE VIII.

OF IMMIGRANTS AND ALIENS.

CHAPTER 33.

OF IMMIGRANTS.

Appointment of immigrant agent.

Salary.

Duties.

1. The governor has power to appoint an immigrant agent as occasion may require. The salary of the immigrant agent shall not exceed eight hundred dollars. He is empowered and his duties shall be to correspond with

the secretary of the board of land and emigration in London and with the agents appointed by that board, with the officers of any associations, or with public spirited persons desirous of promoting emigration to the colonies, and to furnish from time to time such information as may be useful to enable them to send out emigrants for whom there is likely to be suitable employment in this province. CHAP. 33.

To open a book in which persons wishing to engage mechanics, laborers and apprentices, can enter their names and addresses. To open books.

To correspond with county officers and keep a registry of the distribution of immigrants sent into the interior. To correspond and keep registry.

To act as the guardian of immigrant orphan children, to bind them as apprentices and to protect them in case of necessity. Act as guardian of orphans

To render accounts quarterly to the financial secretary, and to make an annual report of his proceedings for the information of the government and the legislature. To render accounts quarterly and report annually.

To act under such instructions as may be issued by the governor in council from time to time. To act under instructions.

2. The governor in council may authorize the immigrant agent to draw from the treasury such sums as may be necessary to temporarily provide for and distribute such immigrants as may be sent into this province. Governor may authorize to draw.

3. Wherever there are tracts of land suitable for settlement, it shall be lawful for the commissioner of crown lands, when so instructed by the governor in council, to lay them off in one hundred acre lots, with convenient roads running through them, and to place them at the disposal of the immigrant agent for actual settlement as hereinafter directed. Commissioner of crown lands to lay off lands and place at disposal of agent.

4. Whenever such lands are required by industrious immigrants arriving in this province for actual settlement, surveys shall be made, and the applicants put into possession and allowed a credit of three years for the purchase money, which, or such portion as under the circumstances the governor shall think fit to direct, shall be expended under such instructions as the commissioner of crown lands with the approval of the governor shall appoint, in opening such roads as may be required for the formation and improvement of the settlement. Surveys and time for payment allowed.

5. The commissioner of crown lands shall furnish the immigrant agent with plans shewing the district ordered by government to be set apart for settlers with its subdivisions and roads; a corresponding plan shall be kept in the crown land office. Purchase money expended on roads.

6. The agent shall receive applications for land for immigrants, and shall refer the same to the commissioner of crown lands, who shall have the requisite lots surveyed, and the usual entries and report made and decisions of the executive council obtained. The decision shall be communicated to the immigrant agent with proper plans. Agent to be furnished with plans, &c.

Agent to receive immigrants applications for crown lands, and refer to commissioner of crown lands.

CHAP. 33.

Licence of occupation.

When to take possession.

Purchase money; how secured.

When grant issued.

Licence of occupation not transferable.

Forfeiture of license.

Mode of proceeding.

Licenses recorded.

7. A license of occupation, with suitable conditions in a form to be approved by the governor in council, shall be executed and given by the immigrant agent to the immigrant settler. The immigrant shall not take possession until his license of occupation has been issued and delivered to him; and previously or as soon after as possible, the lines of the lot shall be run out, blazed and cornered, under the direction of the commissioner of crown lands.

8. Before delivery of the license of occupation, a bond and warrant shall be taken from the immigrant settler for the purchase money, payable in three years with interest, half in two years from date, the residue in three years, upon which bond credit shall be allowed for work performed on roads in conformity with the instructions.

9. Upon the expiration of three years if the terms shall then be complied with and the purchase money paid or satisfied, or at any earlier period if the money shall be sooner paid, the settler shall be entitled to apply to the commissioner of crown lands for a grant on the certificate of the agent.

10. The license of occupation or the possession of the immigrant settler or his improvements shall not be transferable or extendable under execution except on the license of the immigrant agent under his hand; and any attempted transfer by act of the party or under execution shall not convey any title or right except with such license; but on the death of the immigrant settler his inchoate rights shall descend as personal property, subject to the unperformed conditions.

11. If at the expiration of three years the purchase money shall not be paid in money or in work on roads to the satisfaction of the immigrant agent, or if within the three years the property shall be abandoned and left derelict, it shall be lawful for the immigrant agent, with the sanction of the governor in council previously obtained, and after a printed notice posted on the court house and on two other public places in the county where the lands lie that the said lands and all rights of the immigrant therein shall be forfeited unless cause to the contrary be shewn at a place and time therein mentioned, not being less than one month thereafter, to declare in writing under his hand the forfeiture of the lot; and the possession of the lot shall thereupon revert to and be re-invested in the crown as if inquest of office had been formally found in favor of the crown; and any person in possession and refusing or neglecting after notice from the immigrant agent to remove shall be subject to be proceeded against and evicted under the chapter of the revised statutes, "of tenancies and of forcible entry and detainer."

12. The immigrant agent shall record in books kept for the purpose all licenses of occupation issued by him,

and open an account with each immigrant settler, and shall in the first week in January in each year make full returns to the commissioner of crown lands of all licenses of occupation issued by him. CHAP. 34.
Returns.

13. The governor in council may make regulations for carrying into effect this chapter which as far as shall not be inconsistent with the provisions of this chapter or of law, shall have the same force as if herein enacted. Governor in council may make regulations.

CHAPTER 34.

OF THE PRIVILEGES AND NATURALIZATION OF ALIENS.

1. Aliens may take, hold, convey, and transmit real estate. Aliens may hold and convey real estate.

2. No title to real estate shall be invalid on account of the alienage of any former owner or holder thereof. Titles not invalid.

3. Nothing in this chapter shall have the effect of confirming or rendering valid the title or claim of any alien, invalid or incapable of being enforced on account of alienage, on the thirty-first day of March one thousand eight hundred and fifty-four. Foregoing provisions not retrospective.

4. Every alien who shall have resided in this province for one year after the twenty-ninth day of April in the year one thousand eight hundred and sixty-two, or who shall at any time thereafter come into this province with intent to settle therein, and shall reside continuously therein for one year, shall upon taking and subscribing the oath of allegiance in manner hereinafter mentioned become within this province a naturalized subject of her majesty, entitled to all the rights of such subject as fully as the same can be conferred under or by virtue of the act of the imperial parliament passed in the tenth and eleventh years of her majesty's reign, entitled "an act for the naturalization of aliens." Mode of naturalization.

5. Such oath shall be taken and subscribed in duplicate by such alien, and shall be administered by the clerk of the peace of the county or district within which such alien resides, and the clerk of the peace shall attest the same and shall thereupon deliver to the alien a certificate under his hand and seal that such oath has been taken, which certificate shall be evidence of its contents, and for which he shall be entitled to receive from such alien one dollar. Oath, how taken.
Certificate.

CHAP. 35. 6. One copy of such oath shall be filed in the office of the clerk of the peace of the county or district within which such alien resides, and the duplicate certified by such clerk shall by him be transmitted to be filed in the provincial secretary's office.

Oaths, where
filed.

TITLE IX.

CHAPTER 35.

OF THE CENSUS AND STATISTICAL INFORMATION.

Board of statis-
tics—how ap-
pointed.

1. Two members of the executive council to be appointed by the governor in council shall, together with the financial secretary for the time being, constitute a board of statistics, and shall have the general supervision of the statistics of the province.

Board shall pre-
pare forms.

2. The board shall prepare and cause to be printed and circulated, as hereinafter provided, all such forms as to them shall seem best adapted for the purposes of this chapter, and such instructions as they shall deem necessary for the guidance of the persons appointed to take the census hereinafter provided for.

Board to ap-
point enumera-
tors.

3. The board of statistics shall appoint enumerators, who, before entering upon the duties of their office, shall be sworn into office before a justice of the peace, who shall administer the oath without charge.

Duties of enu-
merators.

4. The enumerators shall visit every house within their section and take an account in writing according to the forms to be provided for that purpose by the board of everything specified in the forms.

Enumerators
may demand
answers.

5. The enumerators may demand from the head of the family residing within their respective sections or from any member of the family being more than twenty-one years of age, and from the owners and managers of factories and agents of companies, or from others having knowledge of the matters enquired into and not being minors, true answers to all questions necessary for the purpose of taking such accounts; and any such person who shall not answer or shall wilfully give a false answer to any such question, and also every person who shall in any way wilfully obstruct an enumerator in the execution of his duties, shall for every such offence forfeit not less than two nor more than ten dollars.

Penalty.

Penalty on enu-
merators.

6. Any enumerator who shall not perform the duties required of him by this chapter shall for every offence forfeit not less than twenty nor more than forty dollars.

7. Any person who shall not comply with the requirements of this chapter for any matter for which no punishment is herein specially provided shall be guilty of a misdemeanor. CHAP. 36.
Where offence not prescribed a misdemeanor.

8. The governor in council shall have power to fix by proclamation, to be published in the royal gazette, the time for taking any future census in this province. Governor in council may fix time.

9. The governor in council may frame such regulations as may be thought necessary for the guidance of the board of statistics, and may prescribe the forms and proceedings to be used in such census, and shall have such power as may be requisite to carry out the suggestions of the registrar general of England in reference to such census or so many of such suggestions as may be deemed suitable to the circumstances of this province. Governor may frame regulations.

TITLE X. OF CERTAIN PUBLIC OFFICERS.

CHAPTER 36.

OF THE SALARIES OF CERTAIN PUBLIC OFFICERS AND CERTAIN PENSIONS.

1. There shall be allowed to the several officers hereinafter mentioned, to be paid quarterly out of the public funds income and general revenue, the following salaries, to wit:— Salaries of public officers.

To the governor, fifteen thousand dollars.

To the chief justice, three thousand and two hundred dollars.

To the honorable W. B. Bliss, one of the assistant justices of the supreme court, during his incumbency, three thousand two hundred and fifty dollars.

To the other assistant justices now or hereafter to be appointed, two thousand and eight hundred dollars.

To the provincial secretary two thousand eight hundred dollars.

To the attorney general two thousand dollars.

To the solicitor general five hundred dollars.

To the receiver general two thousand four hundred dollars.

To the financial secretary two thousand four hundred dollars.

To the commissioner of crown lands two thousand dollars.

To the commissioner of crown land's first clerk one thousand dollars.

CHAP. 36. Additional clerks one thousand two hundred dollars.

To the receiver general's first clerk and cashier of the savings' bank one thousand dollars.

To the financial secretary's first clerk eight hundred dollars

To the first clerk of the post office at Halifax seven hundred and fifty dollars.

To the second clerk do. five hundred dollars.

To the third clerk do. five hundred dollars.

To the fourth clerk do. five hundred dollars.

To the messenger at Halifax three hundred dollars.

No fees to judges or provincial secretary.

Salaries; certain officers limited.

2. The salaries of the chief justice, assistant justices, and provincial secretary, to be without any fees whatsoever.

Salaries chargeable on general revenue.

3. The salaries of the governor, chief justice, assistant justices, provincial secretary, attorney general and solicitor general, are to be continued until eighteen months after the demise of her present majesty; but the following sums, being in whole or in part of the salaries granted to the different officers by the first section, and made chargeable upon the general revenues of this province, viz:—

Governor, ten thousand dollars.

The assistant justices, two thousand four hundred dollars, leaving the remainder of such salaries determinable upon the contingency mentioned in this section.

Retiring pensions.

4. There shall be paid quarterly to the several persons hereafter mentioned for their respective lives, out of the public funds income and revenue, the following pensions, viz.:—

John G. Marshall, esquire, twelve hundred dollars.

William Q. Sawers, esquire, twelve hundred dollars.

Henry W. Crawley, esquire, twelve hundred dollars.

John Spry Morris, esquire, twelve hundred dollars.

The hon. Alexander Stewart, sixteen hundred dollars.

When certain pensions to cease.

5. The pension to John G. Marshall, William Q. Sawers, Henry W. Crawley and John Spry Morris, shall cease upon their respectively accepting an office under government of equal or greater value.

When hon. A. Stewart's pension to cease.

6. The pension to the honorable Alexander Stewart shall cease upon his accepting an office under the provincial government of equal or greater value to or than the pension hereby allowed to him.

Travelling expense of judges.

7. The chief justice and assistant justices on circuit shall be severally allowed four dollars and sixty-six cents a day for their travelling expenses, to commence on the day of leaving their respective homes or places of abode, and to end four days after the adjournment of the court at the termination of the circuit.

CHAP. 37.

CHAPTER 37.

OF THE QUALIFICATIONS, APPOINTMENT AND TENURE OF OFFICE
OF THE PRINCIPAL JUDICIAL OFFICERS.

1. No person shall be appointed a judge of the supreme court unless he shall have been a barrister of the province for ten years and shall have been practising as such for five years next before such appointment. Qualifications of judges.
2. The judges of the supreme court shall hold no other office under government except that of judge of the admiralty and that of vice president of the court of marriage and divorce. Judges to hold no other office.
Exception.
3. The judges of the supreme court shall hold their offices during good behaviour notwithstanding the demise of her majesty. Tenure of office
4. It may be lawful for the governor to remove any judge of the supreme court upon the address of the legislative council and house of assembly, and in case any judge so removed shall think himself aggrieved thereby it shall be lawful for him within six months to appeal to her majesty in her privy council, and such amotion shall not be final until determined by her majesty in her privy council. Removal, how effected.
5. When any judge of the supreme court shall die or resign his office, or be removed in the manner authorized by the preceding section, it shall be lawful for the governor to appoint by commssion under the great seal of this province some fit and proper person to hold the said office until the royal pleasure shall be made known, and such appointment shall be held to be superseded by the issuing of a commission under the great seal of this province to the same person or such other person as her majesty shall appoint in the place of any judge who has died or resigned or been removed by the manner authorized by the preceding section, or by signification within the province of the royal decision in the privy council restoring to his office any judge who may have been so removed. Appointment of judges.

CHAPTER 38.

OF THE OFFICES OF RECEIVER GENERAL AND FINANCIAL
SECRETARY AND THE RENDERING AND AUDIT OF THE PUBLIC ACCOUNTS.

1. The receiver general shall give bond in sixteen thousand dollars, with four sureties in four thousand dollars each, for the faithful discharge of his duties, and shall hold office during pleasure. Receiver general's bonds and tenure of office.

CHAP. 38.

Clerk, his duty,
bonds.

2. He shall have a principal clerk to assist him in the business of his office who shall be the cashier of the savings bank, and shall give bond in four thousand dollars, with two sureties in two thousand dollars each, for the faithful discharge of his duties.

Financial Secretary's bond
and tenure of
office.

3. The financial secretary shall give bond in eight thousand dollars, with two sureties of four thousand dollars each, for the faithful discharge of his duties, and shall hold office during pleasure.

Clerk, his duty,
bonds.

4. He shall have a principal clerk to assist him in the business of his office who shall give bond in four thousand dollars, with two sureties in two thousand dollars each, for the faithful discharge of his duties.

Receiver General and Financial
Secretary members of ad-
ministration.

5. The receiver general and financial secretary shall be members of the provincial administration for the time being.

Receiver General's
duties.

6. The receiver general shall receive and on the warrant of the governor pay all public monies; and it shall be competent for the governor in council to direct from time to time which of the public accounts shall be filed in his office, and in what form the books to be opened thereat shall be kept; but one general cash book shall be kept by him, in which there shall be entered from day to day all monies received and paid, with the names of the parties who received or paid the same, and which book shall be open at all times to the inspection of the members of the executive government or of any member of the legislature.

Receiver General manager of
treasury notes, funded debt,
and savings' bank.

7. The receiver general shall manage or superintend the treasury notes, the funded debt, and the savings bank, as hereafter provided for.

Financial Secretary's duties

8. It shall be the duty of the financial secretary to examine and check from time to time as they shall come in all accounts of public receipts and expenditures of every kind and description. The accounts of the revenue officers and collectors of light duty at Halifax and in the outports shall regularly pass under his supervision, and any error or mistake therein be immediately pointed out and rectified, and the attention of the governor in council, if necessary, directed thereto; and no account of any public expenditure whatsoever for road work, public buildings, light houses, education, or otherwise, shall be paid by the receiver general until the same shall have been carefully examined and certified to be correct, or any mistake or error therein pointed out and rectified by the financial secretary, or in case of his absence or indisposition by his principal clerk.

Warrants ;how
drawn.

9. Such accounts, so examined and certified under the hand of the financial secretary, or in case of his absence or indisposition under the hand of his principal clerk, shall be necessary vouchers previous to the issue of a warrant for the payment of the sums therein expressed,

or for the payment thereof under any general warrant CHAP. 39.
previously issued therefor.

10. The principal revenue officer at Halifax and the receiver general shall furnish quarterly accounts of all sums received and paid by them respectively, and to be examined and checked by the financial secretary; and such quarterly accounts shall be collected and formed into one general account, to be presented by the principal revenue officer and the receiver general to the general assembly in every year within the first ten days in each session, and to be examined and audited by a joint committee drawn from the legislative council and house of assembly as heretofore.

Quarterly accounts rendered to financial secretary, and presented to assembly annually.

11. It shall be competent for the governor in council to direct from time to time which of the public accounts shall be filed in the office of the financial secretary and in what form the books to be opened thereat shall be kept, and also from time to time on the report of the financial secretary to issue such orders for the more economical expending of the public monies, by the taking of contracts after due advertisement, or by such other guards and provisions as may appear most judicious for the checking of any abuse and the more vigilant and faithful husbanding of the public monies.

Governor may give directions for management of office.

TITLE XI.

CHAPTER 39.

OF TREASURY NOTES, THE SAVINGS' BANK, AND PROVINCIAL
LOAN.

1. The governor in council shall appoint three commissioners of treasury notes, who shall hold office during pleasure and be sworn before a judge of the supreme court to the faithful discharge of their duties; any vacancy to be filled up by a similar appointment.

Commissioners of treasury notes, how appointed.

2. Treasury notes issued after the passing of this chapter may be expressed to be payable in dollars.

Treasury notes may be expressed in dollars.

3. The denomination of such notes and their form shall be fixed by the governor in council, but no note shall issue for a smaller sum than four dollars; and all impressions taken from the plate now in the custody of the provincial secretary shall be securely kept in his office till required by the commissioners or any two of them at the instance of the governor in council.

Denomination fixed by Governor.

Not less than four dollars. Impressions kept till required.

4. The commissioners shall from time to time deliver to the receiver general as many new treasury notes as

Old notes replaced.

CHAP. 39. may be required to replace the old, and such new notes shall be immediately signed by the receiver general.

Receiver General to pay warrants in gold, silver or treasury notes.

Notes received in payment of duties,

Torn or defaced notes—how disposed of.

Savings bank—how managed.

5. The receiver general shall pay all warrants in gold and silver, if in the treasury, or in treasury notes, which notes shall be again received at the treasury and in payment of duties at the specified value.

6. Treasury notes when torn or defaced shall be lodged in the provincial secretary's office in sealed packets and replaced by new notes.

7. The receiver general shall superintend the savings' bank, and shall see that the same is conducted by the cashier in accordance with instructions issued by the governor in council. The receiver general shall personally superintend the weekly payments and receipts of the cashier, and shall examine his accounts and vouchers every month, and certify them to be correct; and the cashier shall prepare at the end of every year a full abstract of the accounts and proceedings and a report of the state of the bank, to be certified by the receiver general and laid before the legislature.

Depositor to be paid interest.

8. Depositors in the bank shall be paid four per cent. interest the amount to be received from any one person to be fixed by the governor in council, and monies deposited under this chapter shall be applied by the governor in council from time to time for such uses as shall have been approved of and sanctioned by the general assembly. The amount of deposits in the bank shall not exceed nine hundred thousand dollars.

Amount of deposits limited.

Governor may open cash account with city banks and borrow money.

9. The governor may cause a cash account to be opened at one or more of the banks in the city of Halifax, and may borrow and receive from such banks such sums of money as may be necessary for the use of the province, in such amounts as may from time to time be required, under such conditions and upon such terms, stipulations and agreements for the payment and re-payment of such monies and for the management of such accounts, as by the governor in council may be established, prescribed and directed, with the consent of the directors of the bank; or otherwise may borrow and receive from any other persons, corporations, and companies a sum not to exceed one hundred and twenty thousand dollars, at the lowest interest at which such loan can be effected.

May borrow from other persons, &c.

Amount limited.

Monies—how drawn.

10. The money may be drawn for and received from time to time in such sums and under such restrictions and regulations as may be prescribed by the governor in council, with the consent of the lenders thereof.

Public funds, &c. pledged for repayment.

11. For the repayment of all monies borrowed under this chapter, and for the final payment and discharge of the balance which shall be remaining due and unpaid on the final closing of such accounts with such lender, with interest, the public funds, monies and credits of this province, are hereby pledged and rendered liable.

12. An account of all sums borrowed or repaid under this chapter, with the date of the loans and repayments respectively, shall be laid before the joint committee of the legislature appointed to examine the public accounts, together with the drafts and vouchers relating to the same, at each session.

CHAP. 40.
Account and
vouchers to be
laid before
legislature.

TITLE XII.

OF COUNTIES AND COUNTY OFFICERS.

CHAPTER 40.

OF THE BOUNDARIES OF COUNTIES, DISTRICTS AND TOWNSHIPS.

1. The boundary lines of counties, districts and townships, are confirmed as at present established.

Boundary lines confirmed.

2. Whenever it shall be made satisfactorily to appear to the governor in council that the lines and bounds of any county, district or township, are uncertain and require to be run out, or where the traces of such lines or bounds have disappeared, and it shall be necessary to establish the same anew, it shall be lawful for the governor in council to authorize the commissioner of crown lands to appoint a surveyor to perform the said work, and to set up permanent marks and boundaries upon said lines.

When lines uncertain, governor may order survey.

3. Before such surveyor shall proceed to perform that duty, notice shall be given by the commissioner of crown lands or the surveyor to the custos of each county or district, and at any general or special sessions thereafter to be holden, such sessions shall nominate one or more persons to represent the interests of such county, district or township lines, and the fixing the necessary marks and bounds thereof, who shall make and return a plan thereof.

Notice to custos &c. before survey.

4. The cost of such survey shall be paid out of the proceeds of the crown lands.

Sessions, duty of.

5. The expenses of the nominees for each county, district and township, shall be a county charge.

Cost of survey, how paid.

Expense of nominees, county charge.

6. The award of the majority shall decide the line, and in case of no majority, the same shall be decided by the commissioner of crown lands.

Line how decided.

CHAP. 41.

CHAPTER 41.

OF CORONERS.

Coroners, how appointed and sworn.

1. Coroners may be appointed by the governor in council and shall be sworn into office before a judge of the supreme court or the custos of the county.

Inquisitions, when and how returned.

2. Coroners shall return their inquisitions to the clerk of the crown for the county at or before the then next sittings of the supreme court. The clerk shall file the same without fee and give the coroner a certificate containing the date of the inquisition and the date of the filing of the same.

Clerk of crown to file without fee and give certificate.

Juries, how summoned.

3. Coroners shall either personally or by a constable furnished by them with a precept summon a jury of the inhabitants of the county to attend inquisitions when requisite at a time and place appointed, and if necessary may hold inquest on a Sunday.

Inquisitions, may be held on Sunday.

Fee for inquisition, how drawn and appropriated.

4. Upon the certificate of such clerk of the crown being filed with the provincial secretary, the governor may draw a warrant on the receiver general in favor of the coronor for ten dollars in full for each inquisition, two dollars and forty cents thereof to be paid to the jury and fifty cents to the constable for their fees.

Fee for medical men.

5. Medical men examined before a coroner's jury shall be entitled to five dollars each, to be paid by the county, together with travelling fees, at the rate of five cents per mile; but no such charge shall be made unless the witness shall be called by the direction of a majority of the jury, and such charge shall include a postmortem examination if made. Before any claim on a county for such charges shall be allowed, a certificate from the coroner that such examination was required by a majority of the jury shall be produced.

Travelling fees.

No charge unless witness called by jury. To include post mortem examination.

Certificate of coroner necessary.

Extra charges, how defrayed.

6. If there be any further necessary or extraordinary charge on an inquest or burial besides those mentioned in the preceding sections of this chapter they shall be defrayed by the county.

If grand jury neglect to present, justices may amerce.

7. If any grand jury neglect or refuse to make a presentment for the amount of expense so incurred, the justices in session shall amerce the county for any sum which may appear to them necessary to be raised for that purpose.

Appeal.

8. Any person aggrieved by the assessment may appeal as in case of ordinary county rates.

Justice may act instead of coroner.

9. In the absence of the coroner an inquisition may be held before a justice who shall be entitled in such case to the same fees as a coroner.

Returns to Provincial Secretary.

10. Coroners shall return lists in triplicate of the inquests held by them, together with the findings of the

juries, to the office of the provincial secretary, on or before the tenth day of January in every year, under a penalty of twenty dollars. CHAP. 42.
Penalty for neglect.

CHAPTER 42.

OF CLERKS OF THE PEACE.

1. Clerks of the peace shall be appointed by the custos of the county or district during pleasure, and shall be sworn into office by the custos or a judge of the supreme court. Clerks of peace,
how appointed
and sworn.

2. Upon the vote of a majority of the sessions the office of the clerk of the peace shall become vacant; and in case of any vacancy upon the neglect or refusal of the custos to make such appointment within one month after such vacancy shall have happened, the governor in council shall appoint; but clerks of the peace shall continue to hold office until their successors are appointed. Vacancy pro-
vided for and
how filled.

3. Every clerk of the peace shall cause to be engrossed in a book kept for that purpose only and properly indexed all rules, regulations and orders of the sessions in force or such as may be made, with their dates respectively, which book, together with all other papers and records of the sessions, shall be open for inspection at all reasonable times. Duration of
office.
Book of rules,
and orders of
sessions, &c.

4. Every clerk of the peace shall annually, on or before the tenth day of January, return in triplicate to the board of statistics a list of all convictions had, and of all fines and penalties imposed by the sessions, the amount of fines and penalties collected and how appropriated, with the names of all offenders, under a penalty of twenty dollars. Returns to
board of statis-
tics.
Penalty for
neglect.

5. No clerk of the peace shall receive any fee for the duties of office except in cases of licenses only. No fees except
in case of li-
cense.

6. The clerks of the peace in the several counties or districts with the consent of the custos, may appoint deputies to act for them in case of sickness or temporary absence, for whose conduct the principal shall be responsible; and all deputies so appointed shall have the same powers vested in them for the time being as by law are vested in the principal, and their acts shall be equally valid. May appoint
deputies.

CHAP. 43.

CHAPTER 43.

OF PROTHONOTARIES AND CLERKS OF THE CROWN.

- Appointments, how made. 1. The governor in council shall appoint and commission one person to be prothonotary of the supreme court and clerk of the crown in every county as vacancies shall occur.
- Prothonotaries to make return of fees on oath. 2. The prothonotaries shall, on or before the first day of February in every year, make a return under oath into the receiver general's office of the fees received by them.
- Prothonotaries &c. to give bonds. 3. The prothonotaries and clerks of the crown, to be appointed as aforesaid, shall give bonds in such sums and with such securities as may be directed by the governor in council, conditioned for the performance of the duties of their office.
- Country prothonotaries to act as clerks of the crown. 4. The prothonotaries throughout the province shall issue subpoenas in crown cases and perform all such other duties as may appertain to the office of clerks of the crown.
- J. W. Nutting's salary, how paid. 5. If the fees and emoluments of James W. Nutting, Esquire, the present prothonotary and clerk of the crown at Halifax, do not amount in any one year to the sum of two thousand four hundred dollars, the deficiency shall be paid to him out of the treasury.

CHAPTER 44.

OF GENERAL AND SPECIAL SESSIONS.

- Halifax sessions, when held. 1. The general sessions of the peace for the county of Halifax shall be held on the first Tuesdays of March, June, September and December, respectively, and the grand jury are required to give their attendance thereat.
- Grand jury to attend. 2. The general sessions of the peace in the other
- Other counties when held. counties shall be held as follows :
- For Colchester, on the second Tuesday of January.
- Cumberland, on the first Tuesday of January.
- Pictou, on the first Tuesday of February and first Tuesday of July.
- Hants : West Hants, at Windsor on the first Tuesday of October ; East Hants, at Gore on the second Tuesday of October.
- Kings, on the last Tuesday of April and last Tuesday of October.

Annapolis, on the third Tuesday of April and last Tuesday of October. CHAP. 44.

Digby: at Digby on the first Tuesday of November; Clare, at the sessions house at Clare on the last Tuesday of April.

Lunenburg, on the second Tuesday of January, and at Chester on the third Tuesday of January.

Queens, on the second Tuesday of January.

Shelburne: at Shelburne on the second Tuesday of January and first Monday of June; at Barrington on the Monday next after the fourth Tuesday of April.

Yarmouth: at Yarmouth on the third Tuesday of September; at Tusket Village on the last Tuesday of April.

Antigonish, on the second Tuesday of January.

Guysborough: at Guysborough on the third Tuesday of January and first Tuesday of May; at Sherbrooke, St. Mary's, on the first Tuesday of December.

Cape Breton, on the first Tuesday of March and second Tuesday of July.

Victoria, on the third Tuesday of March and third Tuesday of September.

Inverness, on the first Tuesday of October.

Richmond, on the second Tuesday of January.

3. In counties or districts where two terms are held the grand jury shall attend only at the fall or winter term. In all counties or districts where there is a single session for the year the grand jury shall attend. Grand Jury when to attend.

4. The general sessions may be kept open in the county of Halifax for fourteen days, but in other counties or districts for not more than ten days, and they may be adjourned from time to time during term as occasion may require. Duration of sittings and adjournments.

5. Bills of indictment may be preferred, found and tried, and judgment thereon given, in the general sessions of the peace for the county of Halifax, as heretofore, and persons convicted thereat may be sentenced to confinement in the county jail in the same manner as if tried and sentenced in the supreme court. Indictments may be found and tried in Halifax sessions.

6. When a question of law shall arise, and the sessions desire the opinion of the supreme court thereon, the clerk of the peace may be ordered to prepare a case, to be signed by the custos or the presiding justice, which may be filed and entered by either party interested therein, or by the clerk of the peace with the prothonotary, for argument at the next sitting of the supreme court in the county. Cases may be prepared for supreme court

7. The presiding judge may order the case to be sent back to be amended if he shall see fit, he may hear and determine the same, or he may, if he think the matter more fit for the determination of the whole court, grant a *rule nisi*, returnable at Halifax, to be argued and disposed of as other rules are. The judgment of the supreme court, Amendments adjudication provided for.

CHAP. 45. whether in the country or at Halifax, shall be embodied in a rule and returned to the court of sessions by the prothonotary, and shall be final.

Special sessions, how called; what business transacted

8. The custos of his own authority may, and upon the written requisition of three justices, specifying the particular objects thereof, shall call special sessions for the transaction of any business which may be legally transacted thereat, and he shall in all cases direct the clerk of the peace to convene the same, giving him at the same time the necessary information as to the objects thereof, and the clerk of the peace shall forthwith post up advertisements in at least five of the most public places in the township or settlement interested in the business to be transacted at such sessions, and if there shall be any business affecting the interests of the county or district generally, then advertisements shall be posted in at least three of the most public places of each township of such county or district, and all such advertisements shall be posted up at least five days before the meeting of the sessions, and shall mention the particular business to be transacted thereat, and a copy of the notice shall be filed by the clerk of the peace, and no business shall be transacted at such sessions other than that contained in the advertisement. In case of the absence from the county or illness of the custos, any three justices may direct the clerk of the peace to call such special sessions.

Number of justices necessary; records to be made and filed.

9. Every special session, unless otherwise prescribed, shall be composed of five or more justices, and the clerk of the peace, or in his absence, a fit person to be named by the justices present, shall attend and make a record of such sessions and of all proceedings had thereat, to be filed in the office of the clerk of the peace.

*Amended as relates to Halifax
County Sec Cap 14. CHAPTER 45. of Act of 1868*

OF COUNTY ASSESSMENTS.

County treasurer, how appointed.

1. The grand jury shall annually at the general session present the names of three persons being resident in the county, neither of whom shall be the custos of the county, one of whom shall be appointed by the court treasurer for the county, who shall give bond to her majesty, with sureties to be approved of by the custos, in a sum to be named by the sessions for the performance of the duties of his office and shall be sworn into office; and such treasurer shall continue to hold office until a successor be appointed. The salary of the county treasurer may be fixed by the

Salary.

grand jury and sessions. In case no provision is made therefor he shall be allowed one and a-half per cent on all monies received by him for railway damages, and five per cent on other monies. CHAP. 45.

2. The county treasurers in the several counties and districts may with the consent of the custos appoint by writing under their hands, filed in the office of the clerk of the peace, deputies to act for them in case of sickness or temporary absence, for whose conduct the principal and his sureties shall be responsible; and the deputies so appointed shall have the same powers vested in them for the time being as by law are vested in the principal, and their acts shall be equally valid. Treasurers may appoint deputies.

3. In case of the death of a county treasurer a special sessions shall be convened according to law, wherein a treasurer shall be appointed for the time being, or until a county treasurer shall be appointed as provided by the first section; and the temporary treasurer so appointed at such special sessions shall give bonds in the manner required by such first section. In case of death how vacancy supplied.

4. The grand jury on their own knowledge, the recommendation of the court, or the representation of three or more freeholders of such county, shall present any sums of money necessary in their judgment for any public purpose within the county, the same to be confirmed by the sessions; and they may include for their own remuneration, while actually attending the court of sessions and the supreme court, such sum as they may judge necessary, so as the same shall not exceed fifty cents per day for each juror actually attending, and ten cents per mile travelling expenses—the distance to be computed from the residence of the juror to the place where the court is held. Presentments for general purposes.

5. Upon the petition of twenty rate-payers of any township or place certified to be such by a justice of the peace, the grand jury may present any sums necessary for the erection or repairs of lock-up-houses and the payment of keepers thereof, for the purchase, the erection, hiring, or repairing of market or town houses, for the providing of hay scales, weights and appurtenances, for sets of weights and scales, and for measures, long, liquid and dry, for any township or place, and such sums when confirmed by the sessions, shall be added to the apportioned assessment upon such township or place and assessed and levied exclusively thereon. The sessions may make regulations for the use and management of such buildings and public property and may appoint keepers thereof. Remuneration.

The sessions may make an order for distributing over any period not exceeding four years, any amount presented for assessment under the next preceding section or any sum presented for building or repairing a court house or Presentment for local and special purposes.

Power to distribute.

CHAP. 45. jail for the county or district, and may appoint commissioners for expending the same and may authorize such commissioners to borrow such amount on the most favorable terms, and any money borrowed under this chapter shall be a county or district charge and bear interest till paid.

Amercements
for certain purposes—when
grand jury may
neglect.

Pounds

(13)

6. If any grand jury neglect or refuse to make a presentment when necessary for any of the following purposes, that is to say, for the building or repairing a jail or the appurtenances thereof, a court house or sessions house, and for fuel for the use of the same; for the erecting and repairing pounds and providing bolts, bars and shackles, and also for conveying persons accused of crimes to jail, when the distance shall be three miles or upwards, at a rate not over ten cents per mile; for the decent support of poor criminals or poor debtors in jail; for the salary to the treasurer of the county, for a salary to the clerk of the peace of not less than eighty dollars, for the maintenance of a jailor, for the paying of criers for the several courts, for defraying the expenses of poor witnesses on the trial of persons accused of any criminal offence, for defraying the charges of public executions and of conveying criminals under sentence to their place of confinement; for defraying the expenses of persons sentenced to confinement and labor within the county and procuring materials for such labor; for paying extraordinary expenses ordered by the sessions to constables and incurred in execution of their duty in cases of riot or felony; for paying allowances to special constables ordered by the sessions about executing or assisting or trying to execute warrants for felony or misdemeanor; for expenses incurred or necessary to be raised about repairing bridges within the county; for expenses incurred about removing county rates by certiorari or otherwise, or in prosecuting or defending any action or proceeding at law respecting such county affairs, the justices in session shall amerce the county for any sum which may appear to them necessary to be raised for that purpose.

Assessors and
collectors, how
appointed.

7. When any presentment shall be made the grand jury shall furnish to the court the names of such number of persons of the county as the court shall direct to be assessors and collectors respectively for the several townships and places in such county; and the court shall appoint not less than half the persons named; and collectors shall be required to give security to the amount of the rate bills placed in their hands for collection.

Appointment in
cases of
amerceiment.

8. In case of amercement where no assessors or collectors shall have been appointed the sessions shall appoint the necessary number, being persons resident within the county.

9. The clerk of the peace for the county shall in all cases notify the assessors and collectors of their appointment, and they shall be sworn into office. CHAP. 45.
Assessors to be notified.

10. Assessors shall return with the assessment roll a statement of the time spent by them in such duties, and such compensation for their services not to exceed one dollar per day for each assessor, as shall be presented by the grand jury and confirmed by the court of sessions, shall be a county charge and be added to the amount to be assessed upon the county. Return of time and compensation.

11. In case any assessor when appointed as authorized by law neglects or refuses to act, his place may be supplied by another, to be appointed at a special sessions to be convened as soon as practicable after such neglect or refusal shall become known to the custos or clerk of the peace. Vacancy, how supplied.

12. If in consequence of the neglect or refusal to act of any assessor the assessment shall not be proceeded with within the period prescribed in this chapter, the same shall be proceeded with within one month after the appointment made under the preceding section shall be notified to the party appointed. When vacancies supplied—assessment, when proceeded with.

13. Any assessor neglecting or refusing to be sworn into office, or to perform any of the duties belonging to his office, shall forfeit eighty dollars, to be recovered in the same manner as a private debt before any two justices of the peace, and sued for by the clerk of the peace, and the amount when recovered shall be added to the funds of the county. Penalty for refusal to act.

14. For all purposes for which local and direct taxes are and shall be levied by authority of law, unless otherwise specially provided for by law, all land and all such personal property as is hereinafter defined, whether owned by individuals, co-partners or corporations, shall be liable to taxation, subject to the exceptions hereinafter specified, and the occupant of any crown land shall be liable to taxation for the land so occupied, but such land shall not be chargeable for the same. What real and personal estate liable to taxation.

15. The words "personal estate" and "personal property" when they occur in this chapter, shall be understood to include all such goods, chattels and other property as are enumerated in schedule A, hereto annexed, and no other; and the term "property" shall include both real and personal property. Definition of "personal estate" and "personal property."

16. The following property shall be exempted from taxation, viz.: first, lands belonging to her majesty or held in trust for her majesty for the public uses of the province; secondly, every place of worship, every church yard or burial ground, the real estate of every college, academy, or other seminary of learning, every public school house, town hall, court house, lockup house, tem- Exemptions.

CHAP. 45. perance hall, all public landings, public breakwaters and public wharves, all school lands and the property of every township or town, city or county, if occupied for the purposes thereof, or if unoccupied; thirdly, the provincial penitentiary and the land attached thereto, the provincial lunatic asylum and the land attached thereto, the provincial railway, rolling stock, and railway stations and lands attached thereto or to the railway; fourthly, lands belonging to any widow, or minor, or school teacher, when of less value than four hundred dollars; fifthly, funds invested in provincial debentures.

Poll tax, proportions, and upon whom.

17. One-fourth and no more of all local and direct taxes shall be levied and assessed by an equal rate as a poll tax on all male persons living within the district of the age of twenty-one years and not being paupers, and the other three-fourths shall be levied and assessed upon the whole taxable real and personal property of the locality, to be taxed in proportion to the assessed value thereof and not upon any one or more kinds or species of property in particular; provided such poll tax shall not exceed the sum of thirty cents on any individual.

Assessment roll—rules for.

18. In making up the assessment roll the assessors shall be governed by the following rules:

Districts.

I. The assessors in making up the assessment roll shall follow the divisions of electoral district and shall arrange separately in alphabetical order the names of the rateable inhabitants of each electoral district.

To include all assessable property of residents.

II. Where the owner or occupier is resident within the county the assessors for the district within which he resides shall include in the roll the whole of his assessable property.

When in different districts.

III. If such property be situate in different districts of the county, it shall be so discriminated in the assessment roll as to shew for what amount he is assessable in each district.

Non-residents.

IV. Where the owner or occupier is not resident within the county or is unknown and the lands are unoccupied, the lands shall be assessed as lands of non-residents in each separate district in which they lie.

Tenants.

V. Where the owner of lands which are occupied by another party as tenant for any period less than one year resides within the county, the lands shall be estimated as property of the owner saving his recourse against the occupier; and where the owner of the lands is not resident within the county they shall be estimated as the property of the occupier.

Persons unable to pay to be omitted.

VI. In making up the assessment roll the assessors shall not be required to enter upon it the name of any person whom the assessors shall deem to be unable to pay the rate.

19. Between the first day of November and the first day of December in each year, the assessors appointed by the grand jury and court of sessions for each township or district shall proceed to ascertain by diligent enquiry the names of all the taxable inhabitants, and also all taxable property within the same, its extent, amount and nature. They shall then prepare an assessment roll, in which shall be set down in separate columns and according to the best information in their power, the names of all taxable parties in the township or district, with the extent or amount of property assessable against each under the provisions of this chapter and containing the particulars mentioned in schedule B, for each of the items of which the assessment roll shall contain a separate column.

CHAP. 45.

Time in which
assessment roll
to be made.

20. The lands of non-residents shall be designated in the assessment roll, but in a separate part of it under the head of "assessment roll of non-resident lands," and shall contain the several particulars specified in that part of schedule B which refers to such lands.

Lands of non-
residents.

21. All real and personal property liable to taxation shall be estimated by the assessors at its full value, in the same manner in which they would appraise the same in payment of a debt due from a solvent debtor.

Value of prop-
erty, how esti-
mated.

22. The assessors shall complete the rolls on or before the tenth day of January in each year, and they or a majority of them shall forthwith thereafter sign the same, first attaching thereto a certificate in the following form :—

Completion of
roll.

"We do severally certify that we have set out in the above assessment roll all the real and personal property within the county owned or occupied by persons residing within our district, and all the real and personal property within our district owned or occupied by persons not residing within the county liable to taxation within our district, and the actual value thereof in each case, according to our best information and judgment. We further certify that we have in such roll set down the names of all the inhabitants within such district subject to a poll tax."

Certificate.

23. The roll thus certified shall be forthwith forwarded to the clerk of the peace for the county, and a true copy thereof, similarly certified to be made by the assessors, shall be forthwith posted up by them in some public and conspicuous place within the township or district for which they are assessors, for the information of all parties concerned.

Roll when for-
warded to clerk
of peace and
posted.

24. From such roll the county rates and poor rates shall be made as follows:

County rates.

I. Any party residing within the county shall be taxed for his county rate in one sum, which shall be collected by the collector of the district where he resides.

Residents.

II. Such party shall be taxed for his poor rate in each district where his taxable property lies, and the same shall

Poor rates.

CHAP. 45. be collected by the several collectors of the poor rates in the several districts.

Non-residents.

III. Where the party taxable is a non-resident or unknown his property shall be taxable for both poor and county rates in the district where such property lies.

Clerk of peace to make out county rates.

25. The clerk of the peace shall, on or before the first day of April in every year, make out from such roll the county rate for each township or district containing the particulars mentioned in schedule C or other particulars to the like effect.

Assessors to furnish clerk of poor district copy of roll.

26. The assessors shall furnish to the clerks of the poor district within their limits a certified copy of the roll forwarded by them to the clerk of the peace for the county, and within thirty days after the receipt thereof the clerk of the poor district shall make out the poor rate for his district, containing the same particulars as the county rate collectors roll, making allowance for necessary differences, and place the same in the hands of the collectors.

Assessment roll

27. On the assessment roll, whether of county or poor rates, shall be set down the name of each party assessed, the amount of his poll tax, the correct assessed value of the real and personal property of each party for which such party is taxable; and there shall also be put down on such roll the true valuation of the lands of non-residents opposite to the names of such non-residents, and also the amount chargeable upon such lands.

To be delivered to collectors by clerk of the peace.

28. The clerk of the peace shall deliver the roll so to be made by him to the collectors appointed by the court and jury for each township or district.

Collectors roll of poor rates.

29. The town clerk or clerk of the poor district shall deliver the collector's roll of poor rates so to be made by him to the collectors, who shall be appointed as hereinafter mentioned.

Collectors when chosen.

30. At any semi-annual meeting held by law for the support of the poor, under the chapter of the revised statutes on that subject, the inhabitants shall choose so many collectors as they may deem necessary to collect the poor rates for the district or township within which such meeting shall be holden, and shall also choose a clerk, to be called the clerk of such poor district, who shall act as clerk to the overseers of the poor for the district; and such inhabitants shall award to their clerk a reasonable remuneration, to be fixed at such meeting and added to the amount to be assessed on the district.

Remuneration.

Duty of collectors.

31. It shall be the duty of the collector of either poor or county rates to receive the taxes assessed upon the property of non-residents if the same be rendered within the time of his collection.

Non-resident owners.

32. As regards the lands of non-resident owners named in the collector's roll, it shall be the duty of such collector, where the owner is known to him, to transmit by post a

a statement and demand of the charges taxed against him in the roll. CHAP. 45.

33. If the taxes be not paid within twenty days thereafter the collector may apply to two justices of the peace, and upon affidavit being made of such statement and demand having been duly mailed by the collector and that the taxes are unpaid, and upon their being satisfied that there can be found on the lands sufficient timber, wood, poles, or other materials, to defray such taxes and expenses, such justices shall issue a warrant, authorizing the collector to sell so much of such timber, wood, poles, or other materials, as may be necessary to pay such taxes and expenses. Unpaid taxes—
warrants, when
issued.

34. Where the owner is unknown to the collector affidavit of that fact shall supersede the necessity of the affidavit of mailing a notice and demand, and in such case the warrant shall issue as provided in last section. Unknown
owners.

35. If the justices on application of the collector shall be satisfied that no timber, wood, poles or other materials can be found on the land sufficient to satisfy the warrant, they shall give him a certificate to that effect, which shall be his authority for taking no further steps to collect the rate to which such certificate applies. Where no prop-
erty, justice to
certify.

36. It shall be the duty of the collector to levy any warrant issued by such two justices by selling so much of the timber, wood, poles or other materials on the land as will be sufficient to pay the amount of such rates and the expenses connected therewith; and in making such sale he shall sell only so much and such part thereof as shall be sufficient to satisfy such rates and the expenses connected therewith—first selling such part thereof as he shall consider most for the advantage of the owner of the land to have sold. Levy of war-
rants.

37. A purchaser under such sale shall be entitled to a right of entry upon the lands to remove the timber, wood, poles or other materials purchased by him at any time within one year after the sale; and to any other incident that may be necessary to render his right available to him, but shall have no further right, privilege or easement whatever in respect thereof. Purchaser right
of entry.

38. The collector shall give public notice of the day of the sale, of the description of the property, and (when known) the name of the owner and the amount of taxes rated on the property, which notice shall be given at least ten days previously to the sale, by handbills posted up in at least five public places in the township near to the lands in question, and the sale shall be made at public auction. Sale—public
notice of.

39. If the amount realized by such sale shall be greater than the amount due for the taxes and expenses and the costs of such sale (the same being regulated by the amount paid on constable's sales, under executions issued from Surplus money,
to whom paid.

CHAP. 45. justices), the surplus shall be paid over to the county treasurer, who shall enter the same as surplus funds in the book to be kept by him as hereinafter mentioned.

Warrant to be
returned, when
&c.

40. In case the collector shall be unable under such warrant to collect the amount by sale as aforesaid, then it shall be his duty to return such warrant, with a statement of his doings thereon, to the county treasurer, within ten days after the day named in his advertisement for the sale thereunder.

Assessment roll
how returned.

41. Every collector shall at the expiration of the time limited by his roll return to the county treasurer so much of the assessment roll touching the lands of non-residents as relates to those lands in respect of which the taxes remaining unpaid, or in respect of which surplus shall arise in all cases where sales under warrant shall have taken place, and shall also return the certificate given to him as aforesaid.

Records, &c.
kept by county
treasurer.

42. The county treasurer shall record, in a book to be kept by him for that purpose, the description of all such lands, and shall minute opposite thereto the taxes and costs chargeable thereon, and the proceedings had in respect thereof; and such taxes and costs shall be a privileged lien upon the lands, bearing interest at ten per cent for the first year, increasing annually by two per cent additional until payment.

Warrants, by
whom awarded
and when.

43. It shall be the duty of the county treasurer to lay every year before the court of sessions for each county, the book containing such entries, and such court shall have the power, in case they see fit so to do, to award a warrant to the sheriff of the county for the sale of so much of such lands as may be necessary to pay and discharge the amount of the lien thereon with cost of sale; provided always that no warrant shall issue for the sale of any lands until after the rates due thereon, or some part thereof shall have been unpaid at least three years.

Sale, when
ordered by
court.

44. When the court shall have ordered a sale, the clerk of the peace shall issue a warrant addressed to the sheriff of the county where the lands lie, ordering him to make sale of so much of the lands as may be necessary to pay the charges against the same.

Sheriff's sale,
how much sold

45. The sheriff shall thereupon sell by public auction, so much of the lands as shall be sufficient to discharge such taxes and expenses and the charges of sale, selling first in preference such part of the lands as he may consider to be the least to the injury of the owner, and in all other respects, as to notices and other preliminaries of sale, conducting the same agreeably to the forms prescribed on sales under judgments of the supreme court, and within one month after sale he shall return his warrant to the county treasurer and pay over to him the proceeds of such sale, deducting such costs as he would have been entitled

to under judgment sales The sheriff's deed, which shall be in the form E, annexed hereto, or to that effect, shall be *prima facie* evidence of the title of the lands being conveyed to the grantee. CHAP. 45.

46. The county treasurer shall note in the book to be kept by him any surplus monies arising by constable's or sheriff's sales opposite the record of the description of the lands, and any such surplus shall in the meantime be added to the general county fund and be paid to the order of such person or persons as shall prove to the satisfaction of the court of sessions, his or their right to the same as owners of the lands in respect of which the sale occurred. Surplus, how disposed of.

47. The county treasurer on receipt of the taxes on lands of non-residents shall pay over as soon as reasonably may be to the overseers of the poor of any district, so much of those monies as belong to the poor rates of the district. Poor rates on lands of non-residents paid over.

48. The collectors shall pay over the monies received without delay to the treasurer, who if necessary may maintain an action therefor, as for money had and received to the use of such treasurer, and such action, whatever may be the amount claimed, may be brought before any two justices of the peace for the county, subject to appeal as in ordinary cases; and every collector shall make a general return to a justice within the township or place, or if none reside there to any justice of the county, of every person who after demand made either personally on the party rated or by leaving at his residence a written or printed demand of such rate, or if he has removed from the district by mailing a letter containing such demand, directed to his then residence, shall not have paid his rate; and the collector shall make oath in writing before such justice, setting forth the name of every defaulter, the sum assessed, that demand has been made, and what portion of the rate is unpaid. Collector to pay over to treasurer.

49. Such justice shall thereupon forthwith issue a general warrant of distress against the several defaulters in the form in the schedule, directed to a constable not being such collector, commanding him to levy from the goods of each person named in the warrant the sum due by such person, with constable and justices' fees, and shall specify therein when the same shall be returnable, and the constable shall return the same within the specified time under a penalty of twenty dollars, to be collected and added to the funds of the county over the amount collected thereunder to the collector for such township or place, who shall thereupon pay the same to the county treasurer. The justice's fee for such warrant shall be seventy cents, and the constable's fee for each person in the warrant shall be twenty cents; but the constable shall have no travelling fees or poundage, and the justice's fee Return of defaulters.

General warrant may issue

Fees.

CHAP. 45. shall be apportioned among the several persons if more than one in the warrant, and no suit shall be brought against such defaulters before any justice.

Constable's
duty on warrant

50. The constable shall forthwith execute such warrant and pay over the amount collected thereunder to the collector for such township or place, who shall thereupon pay the same to the county treasurer; and if he is unable to find goods sufficient to satisfy the warrant in respect of any parties named in the warrant, he shall make a return to that effect, and the justice shall thereupon issue a separate or general warrant as may be necessary to include costs and fees thereon, directing the constable to take the body or bodies of one or more of the defaulters and commit to jail as under an ordinary execution, and parties so committed shall be entitled to all the privileges of debtors imprisoned under execution.

Separate war-
rant to take
body.

Warrant when
executed by
sheriff.

51. Where the amount to be collected under any warrant of distress or commitment exceeds two hundred dollars the same may be directed to and executed by the sheriff, who shall execute the same, and his fees thereon shall be the same as those of a constable.

Commission to
collectors.

52. The rate of commission to collectors shall not be more than five per cent, but the sessions shall have power to fix a smaller rate.

Collector's duty

Fine.

53. Every person appointed a collector who shall neglect to be sworn into office, or who shall not perform the duties thereof, shall forfeit eight dollars, recoverable in the name of the county treasurer as other debts of the like amount are, which sum when collected shall be paid into the county fund.

Amercements
by supreme
court on ne-
glect of ses-
sions.

54. If the sessions shall neglect to make presentment as herein directed, the supreme court shall amerce the county in such sum as shall appear to them upon affidavit of a rate payer to be necessary for the purpose of the sixth section, which sum shall be assessed upon the inhabitants of the county, collected, paid to the treasurer and accounted for as other rates.

Proceeding in
supreme court.

Clerk of the
peace to pro-
ceed as if pre-
sented.

55. Where the supreme court has power by any act to amerce a county, district or township, an order of the court specifying the amount to be amerced, and the purpose thereof when served upon the clerk of the peace, shall render it the duty of the clerk and of every other county, district and township officer connected with the assessment and collection of rates to proceed in respect to the assessment levy and collection of the sum to be amerced, together with the costs of the rule, when ordered and taxed, in like manner as if the same had been presented by the grand jury and sessions in the usual course.

Officer's duty.

56. Any county, district, or township officer neglecting or refusing to perform any duty devolving upon him under this chapter, may be proceeded against and punished as

for a contempt of court, and shall also be liable to any fine or penalty imposed upon such officer for neglect of duty. CHAP. 45.

57. The supreme court in case of the neglect or refusal of any such clerk or other county, district or township officer to perform any duty devolving upon him under this chapter, shall have power to name a person to discharge such duty in the place of the officer so neglecting or refusing, and the person so appointed shall have all the powers, rights and authorities, and be subject to all the liabilities of the officer in whose room he is appointed.

Fine.

Supreme court may name person when clerk of the peace refuses.

58. In any case in which a collector of poor and county rates shall deem it necessary to apply for a warrant against a defaulter before the demand has been made upon all the persons named in the collector's roll, such collector shall make oath before a justice of the peace that he has demanded the rate from such defaulter, and that he deems it necessary in order to obtain payment thereof that such warrant should issue, and thereupon the justice shall issue a warrant of distress against such defaulter, to be executed in manner prescribed by this chapter.

Special warrant, how obtained,

59. All monies belonging to or due the county shall be paid to the treasurer thereof; and all money due from the county shall be paid by him on the order of the sessions.

Monies paid to treasurer.

60. The treasurer shall once in every year at such time as may be directed by the sessions make up his account and send the same to the clerk of the peace to be filed; and the same shall be laid before the justices and grand jury on the first day of the next sessions to be audited; but the justices, either in general or special sessions, may at any time before the sessions if they see fit order the county treasurer to make out and render his account up to any period named in such order.

Treasurer's account to be prepared annually and audited.

61. Any person aggrieved by the assessment or the levy may appeal to the next sessions held in such county or to any special sessions to be held for hearing appeals, giving at least eight days notice to the clerk of the peace of such appeal, who is required to appear in support of the assessment or rate; but such application shall be founded on affidavit setting forth the grounds thereof; and the court of appeal without prejudice to the whole or any part of the assessment may either set aside or lower the rate on such person or finally determine the appeal as they shall see fit.

Appeals, when and how prosecuted.

62. If any money has been paid by the appellant, and the sessions adjudge that the same or any part thereof be returned, the same shall by order of the sessions be repaid by the treasurer out of any money received from the general assessment of the county; but no appeal shall delay the collection or recovery of the sum assessed upon the appellant.

Repayment when ordered.

Appeal not to delay collection

CHAP. 45.

Overseers of
works to render
accounts.

Proceeding for
default.

Compensation
to overseers,
&c.

Forfeitures and
penalties, how
collected, &c.

Limitation of
action and
venue.

Certiorari, when
allowed and
how obtained.

Rates when
quashed.

Over pay-
ments not re-
coverable, &c.

Definition of
terms.

63. Every person appointed by any presentment and order thereon or by any amercement, to be an overseer of work or distributor of money so raised, shall at the next sessions, and within a reasonable time by the sessions to be appointed, produce his account on oath if required, with vouchers that the money by him received has been expended according to law; and if upon account made he shall be found to have money on hand, he shall forthwith pay the same to such person as the sessions shall appoint, and in default of such account or payment he shall by warrant of the sessions be committed to jail, there to remain in close confinement for three months or until such account be made, and the balance be paid with costs, or sufficient security be given for the same.

64. The sessions out of the money assessed shall from time to time order a reasonable compensation to overseers, distributors of money, and constables employed under this chapter.

65. Forfeitures and penalties hereby imposed, the collection of which is not otherwise provided for, shall be sued for by the clerk of the peace by direction of two justices, and collected as other debts of like amount with costs; but no suit shall be brought before a justice who shall have directed the same; and forfeitures and penalties when recovered shall be paid to the treasurer for county purposes.

66. No action shall be commenced for anything done in pursuance of this chapter after six months from the date of the act complained of, and every such action shall be laid where the cause of action arose.

67. No certiorari to remove rates or orders, or other proceedings of the sessions touching rates, shall be granted but upon motion in the first week of the next term in the county after the time of appeal has expired, and upon it being made to appear by affidavit that the merits of the question on such appeal or orders will by such removal come properly in judgment; and no certiorari shall be allowed till a bond with one surety to be approved by the treasurer be given to him in forty dollars to prosecute the same with effect, and pay the costs if the rates or orders be confirmed; nor shall any rates or orders be quashed for matter of form only, nor any general rate for any illegality in the rates of individuals, except as to such individuals.

68. No action shall be brought against a collector or receiver of money on a rate subsequently quashed on a certiorari or otherwise, but the person who has overpaid shall have the amount refunded by the treasurer on the order of the sessions.

69. The word "county" in this chapter shall include a district wherever a county has been or hereafter may be divided into districts.

70. Where the word "court of sessions" and "grand jury", or other words to that effect, are used in this chapter, the same shall in counties or districts incorporated be construed to mean the municipal council of such county or district.

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Definition of terms.

71. The city of Halifax shall, so far as regards any rates which under the authority of law the corporation has the power to enforce, be exempted from the operation of all the sections of this chapter in reference thereto.

Halifax, how far exempt.

72. If the whole assessment to be contributed in any one year by a district be not collected and paid over to the county treasurer, the amount remaining unpaid shall be added to the next year's assessment of such district, and collected from such district with and in addition to such next year's assessment.

Proceedings when amount for each district ascertained.

73. All travelling and other expenses incurred by justices in the discharge of their appointed duties under this chapter, shall be paid by the county, subject to the approval of the grand jury and sessions.

Expenses, how provided

74. The clerk of the peace shall, when any fine or penalty is incurred, cause proceedings to be instituted to enforce the payment thereof, for the breach of any of the provisions of this chapter, and if he shall neglect to do so within ten days after he shall have been required by the custos or the court of sessions, he shall pay a fine of eighty dollars, to be recovered in the supreme court in the name of the queen; and in case the clerk of the peace shall neglect to fulfil any of the other duties imposed upon him by the same sections he shall pay a penalty of forty dollars, to be recovered as aforesaid.

Clerk to enforce penalties.

Penalty for neglect.

75. It shall be lawful for the general sessions of any county, on presentment from the grand jury recommending the same, instead of appointing assessors for separate townships and places, to appoint in the same manner as other county officers are appointed, one or two assessors for each electoral district within the county, who shall be called local assessors; and also to appoint for the whole county general assessors, not to exceed three in number; and thereafter the assessment roll for each electoral district in any such county shall be made up by the general and local assessors of the district, acting as a board of assessment for such district.

Assessors appointment of.

76. In such case the clerk of the peace shall duly notify the local assessors of the days and places that shall be appointed by the general assessors for holding a meeting of the assessors in each electoral district, and it shall be the duty of the general assessors and local assessors to meet at the time and place named in such notification for the purpose of making up the assessment roll.

Meeting, notice of.

77. From and after the passing of this chapter the poor districts in the counties of Cumberland and Queens

Poor districts—Cumberland and Queens.

CHAP. 45. shall be re-established as they existed previously to the passing of chapter nine of the acts of 1861, entitled "an act to amend chapter forty-six of the revised statutes, 'of county assessments.' "

Assessors to furnish lists.

78. The assessors in those counties shall, within the time allowed for making up the county rolls, furnish to the clerks of the several poor districts wholly or in part within their respective polling districts a list of the names of all taxable parties in such several poor districts, with the amount of property assessable against each for poor rates; and within thirty days after the receipt thereof the clerks of the poor districts shall severally make out the poor rates for their respective districts, and place the same in the hands of the collectors.

SCHEDULE.

A.

All personal chattels of every kind and description at their actual cash value except as qualified beneath.
The average stock of goods on hand of every merchant, trader or dealer, manufacturer, tradesman, or mechanic, such average stock to be considered the mean between the highest and the lowest amount of goods on hand at any time during the year, and to be estimated at cost price.
One-half the value of ships afloat, whether in the province or elsewhere.

B.

Assessment roll for the township [*or district*] of ———.

Name of taxable party.	Value of real estate within the county .	Value of personal estate within the county.	Whole taxable property.	District in which property is.	Amount assessed in different townships.
A. B.	\$2400	\$800	\$3200	Township of A	\$1000
C. D.	400	1500	1600	B	1400
E. F.		800	800	C	800
G. H.		200	200		
Non-residents land within the township [<i>or district</i>], per list.					

Assessment roll of non-residents lands within the town- CHAP. 45.
ship [or district] of ———.

Name of taxable party if known.	Number of acres or thereabouts.	Description of lot sufficient to identify it.	Value of land.
J. R.	500	A lot of land situate to the west of ——— river, bounding thereon on the east [or such other description as may identify it.]	\$800
Unknown.	300	A lot of land originally granted to A. B., [or such other description as may identify it.]	5200

C.

Collector's roll for county rates for the township
[or district] of ———.

Name of taxable party.	Poll tax.	Taxable property.	Rate payable thereon.	Total tax.
A. B.	25 cents.	\$3200 00	\$1 60	\$1 85
C. D.	25 "	1600 00	80	1 05
E. F.	25 "	800 00	40	65
G. H.	25 "	200 00	10	35
Non-residents land.		6000 00	3 00	3 00

Collector's roll for county rates for the township
[or district] of ———.

Name of taxable party, if known.	No. of acres.	Description of lot sufficient to identify it.	Value of land.	Total levy.
J. R.	500	(Copy the description from the certified roll, or give other sufficient description of it.)	\$800 00	40 cents
Unknown.	301	(Copy as above.)	5200 00	\$2 60

You are hereby required to collect three dollars, the tax as specified in the within roll, and to pay over the same to the county treasurer within ——— days herefrom.

A. B., clerk of the peace.

To C. D., collector of county rates for above district.

CHAP. 45.

E.

To all to whom these presents may come :

I, A. B., sheriff of the county of ———, send greeting :
Whereas, C. D., of ———, in the county of ———, on the day of the date hereof, bought for the sum of ——— the lands hereinafter described, at a public auction held at ———, under the provisions of chapter forty-five ; and whereas, upon such sale the said C. D. paid the purchase money :

Now know ye, that I, the said sheriff, in consideration of the sum of ———, so paid to me as aforesaid, have granted and conveyed, and by these presents do grant and convey to the said C. D., his heirs and assigns, all that [*here describe the land.*] In witness whereof, I have hereto subscribed my hand and seal at ——— this ——— day of ———, A. D., 18—.

F.

Form of general warrant of distress.

County of } To A. B. one of the constables of the
———— } township of ———.

Form of general warrant.

Whereas by a rate and assessment made in conformity with law, the persons named in the schedule hereunto annexed have been assessed for county rates for the year ending the ——— ; and whereas it appears to me, one of the justices of the peace for such county upon the oath of C. D., one of the collectors for such township, that the several sums for which they have been assessed have been demanded from such persons respectively, and that the sums set opposite their names in such schedule remain unpaid : these are therefore to require you forthwith to make distress of the goods and chattels of the persons mentioned in the schedule ; and if within the space of five days next after such distress by you taken the sums in the schedule set opposite their respective names, being the sums rated on them respectively, together with their proportion of justice's and constable's fees and the necessary charges of taking and keeping the distress be not paid by each of them respectively, that then you do sell the goods and chattels of such of them as shall not have paid such sums with fees as above mentioned, and out of the monies arising from such sale you do forthwith pay over the sums so due by them respectively to the said C. D., the collector, together with the justice's and constable's fees, if any, by him paid ; and that you do render to the owners of the goods respectively upon demand the surplus remaining from such sale, the necessary charges of taking, keeping and selling the distress, being first deducted, and if no such distress can be made, that then you certify the

same to me, and of your doings under this warrant make due return to me within ——— days after the date thereof. CHAP. 46.

Given under my hand and seal the ——— day of ———

A. D. 18—

(Signed) ——— J. P. (seal.)

CHAPTER 46.

OF JAILS AND OTHER COUNTY BUILDINGS.

1. County or district jails, court houses and session's houses, may be erected and repaired by order of the grand juries and sessions in the respective counties and districts. Jails, court houses and session houses, how erected and repaired.

2. If a jailor or other person shall sell or deliver or permit any person to sell or deliver to any prisoner or other person any spirituous liquors in any jail or jail yard, or within the limits of any jail, or in any room or part of a house or building where a jail is kept, or shall bring or suffer such liquors to be brought therein to be used by any prisoner there, such person shall forfeit a sum not exceeding twelve dollars. Spirituous liquors forbidden within jail limits.

3. Every jailer on a second conviction therefor shall in addition to paying a second fine be disqualified for office and be forthwith dismissed. Penalties for a second conviction.

4. Prosecutions shall be in the name of the clerk of the licenses for the county or district, and on information given him it shall be imperative upon him to sue for such fine. Prosecution to be by clerk of license.

5. Nothing herein contained shall prevent the introduction of liquors for sick persons being in jail when prescribed in writing by a physician. Liquors when prescribed medically may be furnished.

6. If the limits of a jail extend beyond the jail yard and include any house or building other than the jail, nothing herein contained shall extend to such limits unless as respects delivering or carrying such spirituous liquors to prisoners confined within such jail or the limits thereof. Exceptions' where houses within the limits.

7. The supreme court in the different counties shall from time to time make and publish rules and orders for fixing and ascertaining the limits and boundaries of jail yards, and for directing and controlling the conduct of sheriffs, jailers and officers having the charge or custody of prisoners, and for their safe keeping and protection. Jail limits and yards, as well as the conduct of sheriffs and officers, to be regulated by supreme court.

8. The justices in sessions may make orders for the regulation of county buildings and for the internal regulation of county or district jails for the guidance of jailers and other subordinate prison officers, and for the comfort Orders touching county buildings, affecting jails, jailers and prisoners, made by sessions in certain cases.

CHAP. 47. and control of prisoners; but the same shall not extend to interfere with or affect the security of prisoners there confined, nor the custody or control of the sheriff over his prisoners, nor to lessen his responsibility for their safe keeping.

Jailer's salary,
how regulated;
fee may be
abolished.

9. The justices in session with the assent of the grand jury, may regulate the salary of jailers and subordinate prison officers, and may regulate or abolish the payment by prisoners of fees.

Sessions orders
to be submitted
to the supreme
court for allow-
ance.

10. Certified copies of all such orders shall forthwith thereafter be furnished by the clerk of the peace to the prothonotary of the county, and thereupon the supreme court at its next term may alter, disallow or confirm the same. If not altered or disallowed at the next term, they shall immediately thereafter be in force.

Jail regulations
to be posted in
the building.

11. Every sheriff and every jailer shall keep a copy of the jail regulations posted in some conspicuous part of the building, and the clerk of the peace shall furnish him therewith upon demand.

TITLE XIII.

OF TOWNSHIPS AND TOWNSHIP AND PEACE OFFICERS.

CHAPTER 47.

OF TOWNSHIPS, CERTAIN COUNTY AND TOWNSHIP OFFICERS.

Boundaries of
townships con-
firmed.

1. The boundary lines of townships, wherever the same have been established, are confirmed.

Surveyors of
township lines
appointed;
their duties.

2. The grand jury for each county, when required by the court of general sessions, shall nominate out of the respective townships within the county or any of them, six persons, out of whom the justices shall appoint three to be surveyors of lines and bounds of such townships, who shall survey, examine and ascertain the lines and bounds of such townships in such manner as the sessions shall direct; and the lines of townships so surveyed when confirmed by the sessions shall be binding.

Town officers,
how nominated
and appointed.

3. The grand juries in the several sessions of the peace shall annually nominate such number of persons for town officers as the justices shall direct, out of whom the justices shall appoint such number as may be deemed expedient.

See Sec. 25. for form of Oath of Office.

4. If the grand jury and sessions shall not appoint a surveyor of highways or other usual county or township officer for any particular district, any two justices of the peace of the township or settlement may make such appointment.

CHAP. 47.

Surveyors of highways, how appointed in cases of omission of sessions.

5. The officers so appointed shall be respectively sworn to the faithful discharge of their duty before a justice before entering thereon; and upon refusal to accept office or neglect to be sworn in within fourteen days; or misbehaviour therein, every such officer for each offence shall forfeit eight dollars.

Officers to be sworn in; fines for certain offences.

6. If any person so appointed shall die or leave the township during his term of office, or shall not perform the duties thereof, any three justices may nominate and return a list of three persons to the custos of the county or district, one of whom shall be selected by the custos to fill such vacancy. The custos shall return such list with his selection to the clerk of the peace, who shall immediately notify the person selected of his appointment, and the person so appointed shall be subject to the same duties and liabilities as in ordinary cases.

Vacancies, how filled.

7. All plans, grants, title deeds and conveyances, belonging to any township, or in which the proprietors have a common interest, shall be kept in the custody of the clerk of such township, who may recover possession thereof in an action in his own name, and such documents shall be open for inspection to all persons on payment of a fee of ten cents.

Custody of town plans, grants, &c. provided; fee for inspection.

8. The sessions for the county of Halifax are authorized upon the recommendation of the grand jury, to appoint constables to attend upon the sessions and the supreme court within the county, in the same manner as other town officers are appointed.

Constables—how appointed.

9. In case of riot, tumult, or disturbance, or illegal acts of any kind, accompanied with force or violence, or of a just apprehension thereof, if in the city of Halifax, the mayor and any three of the aldermen; and if elsewhere in the province, any three of her majesty's justices of the peace may, by writing under their hands, appoint any number of special constables to assist in preserving peace and order.

Special constables—when to be appointed, and how.

10. Such special constables shall, within the city, be under the direction of the mayor or presiding alderman; and if elsewhere, under the direction of the senior magistrate who has signed their appointment.

By whom directed and controlled.

11. In the city, the mayor or any alderman, and elsewhere any justice of the peace, may swear in such special constables to the faithful discharge of their duty.

By whom to be sworn.

12. The appointment of such special constables shall continue in force for the period of fourteen days from the

Duration of appointment.

CHAP. 47. date of such appointment, unless sooner revoked by the mayor, aldermen, or justices by whom they were appointed.

Disorder, or disturbance or any other act at public meetings.

13. In case of disorder or disturbance which may occur at any public meeting or assemblage of persons, the mayor or any alderman if in the city, or any justice of the peace if elsewhere, upon the request of the chairman of such meeting, or of three or more freeholders, may verbally appoint and swear in special constables who shall aid in restoring and preserving order and peace at such meeting or assemblage.

Constables—refusing to serve.

14. Any person who may be appointed a special constable under the last five sections, and shall neglect or refuse to be sworn into office, shall be liable to a penalty of eight dollars.

Appointment and pay of police constables.

15. The grand jury and sessions may appoint one or more police constables, to act for the preservation of the public peace and order, and for the enforcement of the laws against crime, vice and immorality, in such townships or districts as they shall see fit, and may make regulations as to the duties to be performed by them and may provide for their remuneration by salary or otherwise.

Funds, how raised.

16. The funds necessary for such purpose shall be raised by assessment, upon the districts wherein such officers are appointed, in the same manner as poor and county rates.

Protection of.

17. Any person who shall by force resist any constable or special constable in the execution of his duty, shall be subject to a penalty of not less than two dollars and not more than twenty dollars, to be recovered, if in the city, on conviction in the police court, and if elsewhere, before any two justices of the peace and on non-payment the offender shall be committed to the jail of the county for a period not exceeding thirty days.

Lists of officers posted.

18. The clerk of the peace shall cause lists of all officers appointed at the sessions for the several townships or districts to be posted in at least three of the most public places therein within one week from the close of such sessions.

Officers when to enter on duties.

19. All such officers except overseers of the poor shall enter upon their duties on the twentieth day from the first day of the sessions, and the old officers shall serve up to that time. Overseers of the poor shall take office at the time now by law provided for the holding of the first town meeting after their appointment, and their predecessors shall discharge their duties of office until then.

Surveyors indemnified.

20. Surveyors of highways shall be indemnified by the county in cases where they may bring actions under the written authority of two justices of the peace against persons neglecting or refusing to perform their statute labor.

Officers eligible to re-appointment.

21. All town officers shall be eligible for re-appointment annually and may serve in one or more offices.

22. Surveyors of highways shall make their returns to the clerk of the peace at least twenty days before the meeting of the sessions under penalty of two dollars for each default. CHAP. 48.
Surveyors of highways to make returns.

23. The justices in session may fix the rate of the county treasurer's salary not to exceed five per cent on the amount of monies received by him, unless the grand jury grant an additional sum. Justices to fix salary of county treasurer.

24. In cases where the duties of town officers are not now defined by law, the justices in session shall have power to determine the same. Where duties not defined, justices may determine.

25. Persons required to be sworn into office under this chapter shall take and subscribe the following oath or one to the like effect: "I, A. B., appointed to be —, do swear that I will well and faithfully perform the duties of the office to the best of my skill and ability"; which oath shall be filed with the justice administering the same. Form of oath.

26. For the purposes of this chapter the words "township" and "settlement" shall extend to and include counties or districts, if the context shall require such construction. Definition of terms.

See Chap 12 of Act of 1868. Respecting Animals going at large
CHAPTER 48.

OF FENCES AND FENCE VIEWERS, AND IMPOUNDING OF CATTLE.

1. All fences of enclosed lands shall be built of stones, pickets, boards, logs, poles, brush, or posts and rails, unless the lands are bounded by ponds, unfordable rivers, or the sea, or surrounded by sufficient hedges. Fences, how constructed.

2. Such fences shall be at least four feet and a half high, except stone walls and picket and board fences, which shall be at least four feet high. Height of fences.

3. If any damage be done by horses, sheep, goats, swine or cattle breaking into and destroying the product of such enclosures, the same being enclosed at the time with a sufficient fence in the judgment of the fence viewer, the owner of the animals trespassing shall pay to the party injured the value of such damages. Damages by cattle, from whom recovered.

4. The damages shall be ascertained by an appraisement of three persons living in the neighbourhood, being first sworn before a justice truly to value the same, who shall be entitled to a fee of twenty-five cents each. Of the appraisement.

5. If the owner refuse to pay the amount appraised and such fees, upon notice thereof, the party injured may maintain an action therefor as for any other debt. Damages recoverable after notice as a debt.

6. The proprietor of a field adjoining another enclosed and improved, shall build and maintain his proportion of fencing on that part of such land which adjoins his own, Partition fences—how erected; differences, how adjusted.

CHAP. 48.

and in case of neglect so to do, after three days' notice to that effect, any fence viewer may forthwith cause such deficient fence to be made or repaired, as the case may be, and the person so neglecting shall pay double the expenses of making or repairing such fence, to be recovered by the fence viewer, with costs, as any other debt. If adjoining proprietors differ as to the part or proportion of a new division fence to be made by each, the nearest fence viewer shall decide the same.

Fence viewers' charges; fine for neglect of duty.

7. No fence viewer shall be allowed more than sixty cents per day for his own trouble and time; and for each neglect of duty when notified, he shall forfeit eight dollars.

Obligations of owners of land adjoining improved lands.

8. Where the owner of land, improved or cultivated, shall have made, or hereafter shall make, his proportion or one-half part of the fence separating his land from the improved or cultivated land of the adjoining proprietor, of permanent or durable materials or growth, to be determined as hereinafter provided, he shall not, nor shall any person claiming under him, be required to erect or repair the fence in any other place as between his land and that of such adjoining proprietor, or any person claiming under him, in case of sale or change of occupancy of any part of the land of the latter so long as such portion of fence of the kind above mentioned shall be maintained by the person first above referred to or some person claiming under him.

Sufficiency of fences—how determined.

9. Any two justices of the peace of the county in which the lands referred to lie (due notice in writing for at least three days being first given to the proprietor of the adjoining land) may repair to the land and examine the fence, and pronounce the same by any instrument in writing under their hands to be made of permanent or durable materials or growth within the meaning of this chapter, and such instrument in writing shall thereupon be deposited with the clerk of the peace of the county, in memorial and as evidence of the matters therein stated.

Appeal.

10. Any person feeling aggrieved by the decision of the justices may appeal to the next general court of sessions for the county, whose decision, affirming or reversing the decision of such justices shall be final.

Titles to lands not affected by this act.

11. Nothing in the three preceding sections contained shall be construed to affect the title to the lands on which the fences are erected.

Unimproved land, owner not liable to fence.

12. No owner or proprietor of wood, or barren or burnt lands, not under improvements, shall be compelled to make any part of a fence against or on the same.

Cattle, &c., trespassing on enclosures liable to be impounded.

13. If any damage shall be done by horses, sheep, goats, swine or cattle breaking into and destroying the product of any enclosures, the persons whose fences have been broken and enclosures damaged, may impound the cattle so trespassing till the owner shall claim the same, and tender sufficient amends.

14. The pound keeper shall thereupon as soon as may be, advertise the same in three of the most public places in the settlement where the trespass has been committed, in order that the person injured may proceed against the owner of such animals refusing to pay the damages done thereby.

CHAP. 48.

Pound-keepers duty in such case.

15. The owner of such animals shall pay to the pound-keeper above the damages adjudged under section four—twenty cents for every horse or head of cattle, and ten cents for every sheep, goat or swine, for each day the same shall have been impounded, for their support; and in case of refusal to pay the same within eight days after being impounded, with the charge of advertising, the animals shall be publicly sold; and the proceeds after deducting the pound-keeper's charge for supporting them, and the damages, shall be paid to the owner if he appear within thirty days; if not, then to the overseers of the poor of the place where the trespass was committed.

His fees and the mode of recovery.

16. If any person shall rescue any animals from the person driving them to the pound, he shall forfeit to the party aggrieved four dollars above all damages sustained by the trespass committed by such animals; and if any person break any pound or by indirect means deliver any animals therefrom, he shall forfeit twenty dollars to any person who will sue for the same; which penalty and damages or penalty as the case may be, shall be sued for and recovered with costs, as if the same were a private debt, and the penalties for such pound breach, after deducting any expenses of repairing such breach of the pound, shall be paid to the overseers of the poor for the place where the offence shall have been committed.

Fines for rescue and pound breach; how recovered and appropriated.

17. Such rivers, creeks, bays, harbors, and inlets of the sea only shall be deemed lawful fences, as in the judgment of the fence viewers of the township or place where such lands lie, shall be sufficiently deep and inaccessible to prevent the passing of cattle.

Rivers, creeks, &c. when deemed lawful fences.

18. If any person feel aggrieved by the judgment of the fence viewers as to the lawfulness of such last mentioned fence, or desire the decision of the court of sessions instead, such person may apply to the sessions who shall inquire into the matter, and upon hearing the parties and their witnesses may make an order which shall be binding on all fence viewers and others interested.

Appeals from judgement of fence viewers.

19. In every case where damage shall be done to the enclosed lands of any person by any of the animals hereinbefore mentioned breaking the fences enclosing the same, the owner of such animal shall be liable for the damage if that part of the fence broken by such animal were lawful, although other parts of the enclosing fence may not be lawful.

Damages recoverable if fence broken were lawful.

CHAP. 49.

Owner liable if
cattle break his
portion of fence

Penalty for de-
stroying rail-
ings, &c. on
sides of public
grounds,
bridges, &c.

Not to take
away common
law right.

20. The owner of any of the animals hereinbefore mentioned breaking through a division fence which such person is bound to repair and keep up, shall be liable for any damage done by such animal upon the land of another person enclosed or partly enclosed by such division fence, although the same may not be a lawful fence.

21. If any person shall destroy or injure any railing, stone wall, or fence of any kind, placed on the side of any public square, bridge or causeway, he shall forfeit for each offence not less than one dollar or more than eight dollars, in addition to any private damage sustained.

22. Nothing herein shall be construed to impair the right of action under the common law for damages occasioned by horses, sheep, goats, swine or cattle breaking into lands.

TITLE XIV.

OF THE SUPPORT OF PUBLIC WORSHIP.

*Trinity Church Halifax
Incorporated 1865.
Cap 53.*

CHAPTER 49.

OF THE CHURCH OF ENGLAND.

Licensed cler-
gymen only to
officiate.

Licenses not to
be refused with-
out cause
shewn in
writing.

Parishes estab-
lished: mode of
allotting, divid-
ing and estab-
lishing future
parishes.

Of the election
of churchward-
ens and vestry,
and their power

1. No minister of the church of England shall officiate as a clergyman of that church but such as shall be duly licensed by the bishop, and shall conform to the orders and constitution of the church of England, whereupon he shall be inducted into any parish which may make presentation of him.

2. No license shall be refused without the causes therefor being signified in writing and delivered to the applicant.

3. The parishes already established shall remain as heretofore, and when any church shall be erected for divine service according to the rites of the church of England, the bishop of the diocese may allot a district which shall be the parish of such church, and may divide and subdivide any parish now established or hereafter to be allotted; but no parish shall be divided or subdivided by the bishop unless on the application of a majority of the parishioners of the parish proposed to be divided or subdivided, or by a majority of parishioners expressed at any public meeting of the parish called for the consideration of such a measure.

4. The church wardens and parishioners of every parish shall meet annually on Monday next after Easter-day,

notice of the hour and place of meeting having been first given by the rector or officiating minister, at which meeting the parishioners shall choose two churchwardens and twelve vestry men, to whom the clergyman officiating as rector in the parish shall be added; and such churchwardens and vestry in all matters connected with the church, and persons usually attending its services and ordinances within their respective parishes shall have the like powers as they have heretofore exercised in this province. CHAP. 49.

5. Churchwardens and vestries are hereby constituted within their respective parishes bodies corporate, with power to sue and be sued, to receive grants of real and personal estate for the use of the church and all parish purposes, to improve the same and receive the rents thereof for the like use, and with the approval of the bishop to sell and convey such real and personal property, and to have a common seal, and to make bye-laws and regulations consistent with the laws of the province for the management of the temporalities of their church and the due and orderly conducting of their affairs.

To be bodies corporate for purposes specified.

6. The parishioners shall consist of pew holders and others accustomed to attend upon the services of the church; and such parishioners who have previously paid up their pew rents and assessments, or the accustomed contributions to the church, may if they think fit, at their annual meeting by a majority of those present, grant money for the support of their ministers, and all other expenses which shall be required for the payment of such officers as may be found necessary, and for repairs and other services, which shall be assessed by the churchwardens and vestry in just proportions upon such parishioners, being persons usually attending the services and ordinances of the church according to their respective abilities, and shall be collected in the name of the clerk of the vestry for the use of the parish as an ordinary debt; but no act of the churchwardens and vestry shall be valid unless it be agreed upon by seven of their members; nor shall the assessment be valid unless it be subscribed by that number at least; and the parishioners at their annual meeting shall appoint three of their number, by whom the churchwardens and vestry shall be assessed.

Of parishioners; their power of granting money; mode of assessment and collection.

7. The churchwardens and vestry shall have power to abate any individual assessment if it should appear unequal and to compromise the same for prompt payment or otherwise, as it may be for the interest of the church, without affecting the general rate.

Power of churchwardens and vestry over assessments.

8. The churchwardens and vestry may meet for the transaction of business as often as occasion may require; and the churchwardens, vestry and parishioners, may assemble for all business connected with the parish, except

Meeting for business when and how called.

CHAP. 50. the choice of officers or making assessments, as often as it may be considered necessary, either upon the application of the rector, the churchwardens, or the parishioners, provided that ten at least of the latter sign a requisition to that effect, notice of such meeting and of the business to be transacted thereat having been given by the minister of the parish during divine service in the church on some Sunday at least three days previously.

Churchwardens
&c., refusing to
act, others to be
appointed.

9. In case of refusal to act by persons nominated as churchwardens and vestry, the parishioners shall proceed to nominate others in their place until a sufficient number shall accept office.

Glebe lands
how sold or
leased.

10. No conveyance by lease or otherwise of any parsonage or glebe held by a minister of the church of England shall be valid for a longer period than his own incumbency, unless with the concurrence of the churchwardens and vestry expressed in writing under their common seal, and in no case for a longer period than twenty-one years; but with the concurrence of the bishop, the rector, and the churchwardens and vestry, absolute sale may be made of any glebe lands or other real estate belonging to the parish, if the same be thought for the interests of the church.

CHAPTER 50.

OF RELIGIOUS CONGREGATIONS AND SOCIETIES.

Congregations
formed by deed,
trustees named,
other particu-
lars provided.

1. When any number of persons not less than twenty, capable of contracting, desire to form themselves into a congregation of christians for the public worship of God according to their peculiar rites and ceremonies, they may by deed, by them executed in the presence of two or more witnesses, which shall be recorded in a book kept for that purpose, constitute themselves such congregations and adopt a suitable name therefor and declare the place where the same is established and the particular denomination of christians with whose doctrines such congregation is connected; and they may name two or more persons of the congregation to be trustees thereof and give them a name of office, and describe in such deed by bounds the particular situation of all lands conveyed to or in trust for the congregation for all purposes connected therewith: and they may also set forth in such deed the constitution of the congregation, the mode of admission of future members, by whom the right of voting at meetings shall be enjoyed, how the votes shall be ascertained and given, the

manner in which vacancies in the trust shall be supplied, CHAP. 50.
and such other particulars as they may think proper.

2. The deed shall be duly registered in the office of the registrar of deeds for the county or district where the congregation is established; and after its registry all the lands described therein and all real and personal estate granted to the congregation or to their use shall be vested in the trustees named in the deed for the use of the congregation, and after the death or removal of any trustee or his becoming incapable to act shall vest in the succeeding trustees subject to the same trust without any assignment or conveyance except the transfer of stock and securities in the public funds; and shall also in any suit at law or in equity or in any criminal prosecution be deemed the property of the trustees.

Deed to be registered; property how vested.

3. Such trustees in all cases concerning the real and personal estate of the congregation may sue and be sued by their name of office, and no action shall abate by the removal or death of the trustees or any of them, but shall be proceeded in by or against the succeeding trustees, who shall pay or receive the like monies and costs as if the action had been prosecuted in their names for the benefit of or to be reimbursed from the funds of the congregation.

Trustees to su and be sued.

4. Every congregation established under these provisions may hold, in the name of their trustees, real estate not exceeding the yearly value of eight thousand dollars and personal property not exceeding in the whole at any one time forty thousand dollars; and may use and dispose of such real and personal estate as the congregation shall deem expedient.

Amount of real and personal estate to be held.

5. The members of every such congregation may meet when they shall think proper, and at such meetings by the votes of the majority of the members present may make and put in execution such regulations not being contrary to the laws of this province nor to any rule or regulation embodied in the deed under which the congregation or society may be constituted as the majority shall deem necessary for the government of the congregation, and such regulations may change as they may think proper; and such majority may also choose trustees to supply any vacancy in the trust, and may remove from office any of the trustees for the time being, and manage and superintend the affairs of the congregation; the time and place of meeting shall be duly notified as prescribed by rules therefor, and some fit person shall be chosen chairman at every meeting, and all proceedings thereat shall be entered in the books of the congregation, and signed by the chairman and clerk of the meeting, and proof of such entry so signed shall be deemed sufficient evidence of such proceedings, and of the regularity of the meetings.

Meetings how held; bye-laws may be made thereat; proceedings to be recorded.

CHAP. 50.

Membership
how regulated.

6. Every person admitted a member of the congregation after the registry of the deed shall execute the same in the presence of two witnesses before he shall be deemed a member.

Real estate held
before deed ex-
ecuted: how
conveyed to
new trustees.

7. All real estate which at the formation of any congregation under this chapter shall be held therefor by any trustees not appointed under any act or deed of incorporation, shall, by such trustees or their survivors, or by such of them as then remain in this province, be conveyed unto the new trustees named in the deed by their name of office, and upon the conveyance being made and registered all the estate and interest of the original trustees or the survivors of them and their heirs, shall be vested in the new trustees to the use of the congregation as effectually as if all the original trustees had joined in the conveyance.

Provisions for
enabling con-
gregations in-
corporated by
special acts to
avail them-
selves of this
chapter.

8. Religious societies or congregations incorporated by special act of incorporation, or by deed under the provisions of the act heretofore in force for such purpose, may avail themselves of the provisions of this chapter, provided the parties executing the deed comprise two thirds at least of the members of the former corporation who at the time form a part of the congregation, and also by two-thirds at least of the persons actually exercising the functions of trustees by their individual names as such trustees, and upon the new deed being registered the former act or deed of incorporation shall from thenceforth cease to be in operation, and the property held thereunder shall vest in the new trustees in accordance with the terms of the deed; but nothing herein contained shall affect the legality of any proceedings regularly had under the former act or deed of incorporation.

Real estate how
sold or disposed
of.

9. By the vote of the majority of the members of any congregation present at any regular meeting of the congregation, the trustees for the time being shall sell, mortgage, lease, or convey any real estate of the congregation for such estate, and on such terms as the meeting shall direct; and every conveyance thereof executed by the trustees for the time being, and signed by the chairman of the meeting which shall order such disposal, shall be valid in law to convey such estate in the lands therein described.

Sale of building
used for public
worship, &c.

10. Whenever the congregation using any building for the purpose of public worship may wish to dispose thereof on account of the same having become dilapidated or otherwise, and shall not have legal power to do so, the proprietors of such building at a meeting held for the purpose, after public notice thereof given in at least three of the most public places within the settlement wherein the building is situate, at least ten days previously, may by a vote of three-fifths of the proprietors present at such meeting, appoint a committee of three of their number to make sale of such building, and the committee shall sell

the same conformably to the instructions given at the meeting, and cause the removal thereof, and shall apply the proceeds of the sale as directed by the meeting; but no meeting shall be valid for such purpose unless a majority of the proprietors are present.

CHAP. 50.

Proviso.

11. In case the building shall be vested in trustees who shall not have legal power to sell the building, the same may be disposed of by a meeting of the persons for whose benefit such building is held, called and constituted as directed in the preceding section, and a majority of three-fifths of the persons so interested present at the meeting, may empower the trustees or a committee to sell the building and apply the proceeds.

When vested in trustees.

12. Nothing herein shall authorize the sale of the land on which any building so to be disposed of shall be situated.

Sale of land not authorized.

13. Under the order of any such meeting, or of a meeting of the church members, when by the provisions of the deed of constitution or by the regulations of the congregation the choice of a minister shall be vested in the church members, the trustees may enter into agreements in writing with any clergyman or minister whom the congregation or church shall appoint to their spiritual charge, for such periods and salary as shall be agreed upon.

Clergymen or ministers by whom engaged.

14. The trustees having agreed with any minister or clergyman, shall without delay cause the agreement to be entered at length in the books of the congregation.

Agreement to be entered in congregations books.

15. The trustees for the time being, by the vote of the majority of the members of the congregation at any such meeting shall, in cases where the funds at their disposal are inadequate to the discharge of the claims upon them, sue for and recover from members a rateable share, to be fixed according to the rules of the congregation, of such amount or deficiency, by separate suit for their respective rateable proportion of the whole amount against the respective surviving and solvent members of the congregation, or the representatives of deceased members liable to such payment.

Funds how provided in case of deficiency to meet engagements.

16. Any religious society incorporated by act of this province or constituted by deed under the provisions of this chapter, may at any regular meeting held in accordance with their act of incorporation or deed of constitution alter or amend their constitution or bye-laws; but the constitution shall not be altered unless two-thirds of the members present at any general meeting concur in such alteration.

Society may alter constitution.

17. Any religious society or congregation not incorporated or constituted by deed under this chapter may at any meeting of the congregation held in pursuance of a notice stating the object of such meeting given at their usual place of holding public worship during divine service either by verbal announcement to the congregation, or by

Mode of constituting society.

CHAP. 50. posting the same on the door of such place of worship for three sabbaths preceding such meeting, proceed to appoint a chairman and secretary; and may, upon the vote of two-thirds of the male members of the congregation and of adherents actually contributing to the funds thereof above twenty-one years of age actually present, proceed to the adoption of a declaration by resolution or otherwise, to the effect that they constitute themselves a religious congregation or society, and may at any such meeting or any subsequent meeting called in the same manner proceed by the majority of votes to the adoption of such permanent constitution and bye-laws not inconsistent with the laws of this province as they shall consider necessary, and may appoint trustees and such other office-bearers as they shall see fit and define their powers and duties, and may regulate the terms of membership in the society or congregation.

May adopt constitution and bye-laws and appoint trustees

Estate vested in trustees.

18. The real and personal estate of the society or congregation shall be vested in such persons as shall be duly appointed trustees thereof by resolution of such meeting recorded in the books of the congregation during their continuance in office.

Officers, powers of, &c,

19. The officers appointed from time to time by the congregation or society shall be vested with all such powers for the holding and transference of the property and management of the business of the congregation or society as shall be conferred upon them by the constitution.

Constitution, how altered.

20. The constitution of the society may be altered by the vote of two-thirds of the members present at any meeting of the congregation or society duly called as hereinbefore mentioned. All other business of the society not delegated to the office-bearers thereof shall be transacted by the votes of the majority of members present at any such regular meeting.

Proceedings for sale of church, &c.

21. Any religious society or congregation of christians not duly incorporated or constituted under this chapter, or if so incorporated or constituted not having power to dispose of its place of worship for the purpose of erecting a new place of worship, may at any regular meeting of the society or congregation, by resolution of the majority of two-thirds of the members present, authorize such persons as they may appoint for the purpose to sell or otherwise dispose of the place of worship of the society or congregation in such manner as the meeting shall appoint; and a sale thereof under the authority of such resolution shall be valid and effectual; provided such resolution and authority in writing are duly recorded in the county or district register.

Episcopal corporation may sell real estate,

22. Any episcopal sole corporation holding real estate in trust for any religious denomination in this province,

may dispose of the same by deed executed by him and any three ordained clergymen of the denomination to which he belongs and residing within the diocese. CHAP. 51.

23. Nothing herein contained shall affect any of the provisions of the chapter of the revised statutes "of the church of England," nor shall interfere with the spiritual government and discipline of any church further than may be provided for in the deed or declaration under which the society or congregation is constituted. Not to affect Church of England.

CHAPTER 51.

OF ASSESSMENTS FOR THE REPAIRS OF MEETING HOUSES.

1. When funds are required for repairing, finishing, or painting any meeting house or church, the proprietors thereof, at a public meeting whereof notice shall have been previously given during the time of divine service at such meeting house or church, on three several Sundays, may by vote of three-fifths of the proprietors present at such meeting, declare what repairs are necessary and the amount required therefor, and may also nominate three or more persons a committee to assess and apportion the sum so voted on the several pews of the meeting-house or church, according to the relative size and value of such pews at an equitable rate, of which assessment and apportionment public notice shall be given by putting up the same in some conspicuous place in the meeting-house or church, and also on the door thereof for three successive Sundays on which divine service shall be performed thereat, next after the making thereof. Repairs of meeting houses provided for by assessment.

2. If after such notice the persons interested in any of the pews shall not pay the sums assessed on such pews within three months thereafter, the committee after notice having been given on the previous Sunday immediately after divine service, may proceed to let such pews at auction for such period, not exceeding ten years, as may be sufficient to pay the sum so assessed thereon respectively; or they may on giving the like notice let such pews from year to year until the rate or assessment be fully paid, so that such letting shall not extend beyond the term of ten years. Where assessment not paid, pews may be let for a limited time.

3. The persons who shall so lease the pews shall be put in possession thereof by the committee, and shall have the exclusive occupation thereof during the term of their lease, and the committee may sue for and recover the rent, and shall have power to hold or occupy the same, and to eject any person illegally in possession thereof. Possession, how given; rent recoverable; mode of removal.

CHAP. 53.

A second assessment may be made if necessary.

Places of worship of the church of England and Wesleyan methodists excepted.

4. If the money arising from the leasing of the pews shall not amount to the assessment thereon, the committee may make a new assessment in the same way as the original amount is hereby directed to be assessed.

5. Nothing in this chapter shall extend to any church or chapel belonging to or connected with the church of England, or to any meeting-house belonging solely to the denomination of christians called Wesleyan methodists.

TITLE XV.

OF THE PUBLIC HEALTH.

CHAPTER 52.

OF QUARANTINE.

Quarantine orders to be made by the governor in council.

1. The governor in council may from time to time make quarantine orders, applicable to vessels, goods, persons, and things being within the province or expected hither from abroad, and may revoke, vary, or amend the same, and may affix penalties, forfeitures, and punishments for the breach thereof, which orders shall be notified by proclamation or be published in the royal gazette, and the production of any such proclamation or publication shall be evidence of the making, date and contents of such orders.

Disobedience thereto a misdemeanor, in addition to any forfeiture prescribed.

2. Persons disobeying any such orders may be prosecuted for a misdemeanor, punishable by fine or imprisonment, or both, as the court may direct; or otherwise such persons may be sued for the penalties contained in the order.

CHAPTER 53.

OF BOARDS OF HEALTH AND INFECTIOUS DISEASE.

Sanatory orders to be made by the governor in council.

1. The governor in council may from time to time make sanatory orders and the same revoke, renew, alter, or vary, for the prevention of infectious or contagious diseases, for the relief of persons suffering thereunder, and for the interment of persons who may have died thereof, and

such orders may be enforced by penalties therein expressed, not to exceed four hundred dollars for any one offence, and shall be notified by proclamation or be published in the royal gazette, and the production of any such proclamation or publication shall be evidence of the making, date and contents of such order. CHAP. 53.

2. The governor in council may appoint persons at the several ports of this province to act as health officers therefor, may establish in any place a board of health for carrying such sanatory orders into effect, and may prescribe the duties of such health officer and boards of health, and in case of vacancies may supply the same by new appointments. Health officers and boards of health, how appointed; their duties.

3. No vessel subject by such sanatory orders to be examined shall be admitted to entry inwards at any custom house or office of entry until a certificate of such examination, signed by the health officer, shall be exhibited; nor shall such vessel be admitted to entry or clearance until the master, owner, or consignee shall have first paid to the officer appointed in that behalf all fees and charges authorized by such sanatory orders, to be duly accounted for and paid over as therein directed. Vessels liable to such orders, how entered and cleared

4. The city council for the city of Halifax, and the courts of general or special sessions in other places, may from time to time appoint health wardens for the several townships or districts, who may in the day time enter and examine all houses, buildings and places, and all vessels and boats, and report their condition as required by any sanatory order in that behalf; they shall give directions to health inspectors for cleansing any house, building, place, vessel or boat, and generally for the preservation of public health, the maintenance of cleanliness, and the prevention of contagion and infection. Health wardens, how appointed; their powers and duties.

5. The wardens or any two of them may by order in writing cause any house, building, place, vessel, or boat, to be whitewashed, fumigated, or otherwise purified, and may cause anything dangerous to the public health to be removed therefrom or destroyed. Their powers to make written orders.

6. Every violation of this chapter, or disobedience of any sanatory order duly made thereunder, shall be deemed a misdemeanor, and every person guilty thereof shall incur a penalty not exceeding four hundred dollars. Violation of orders a misdemeanor; penalty.

7. If any health warden upon being notified of his appointment shall refuse to accept the office, or when accepted shall refuse to discharge the duties thereof, or to comply with any sanatory orders to him communicated, he shall forfeit twenty dollars, and another shall immediately be appointed in his place; but no appointment of health warden shall continue for more than one year, nor shall any party be bound to serve oftener than once in four years. Fine for warden's refusal to accept office; and for misconduct; duration of appointment, &c.

CHAP. 53.

Cases of plague or imminent danger, how provided against.

8. If any infectious plague, disease or distemper shall have been introduced, or there shall be imminent danger of its introduction into any port or place, the board of health, or if there be no board of health, the general sessions, if then sitting, and if not, a special sessions of the peace may assemble and make sanatory orders as occasion may require, with penalties as in the first section above mentioned, and may appoint persons to enforce the same; and thereupon copies of such orders shall be forthwith transmitted to the provincial secretary's office, and the same, until altered or amended by the governor in council, shall continue in force.

Power of removal of persons sick of infectious diseases, and vacating houses when necessary.

9. Any board of health or health wardens, or where none exist any general or special sessions, may order to be removed from any dwelling-house or place, or from any vessel or boat approaching near to or within any place or port, any person sick with any contagious or infectious disease to any hospital, house or place proper for that purpose; it being first certified in writing by two or more physicians of the port or place, or if there be but one there resident, then by him, that such removal is necessary for the public health; and if any person be sick with infectious or contagious disease in any house or place, and such person cannot in the opinion of such physicians be removed, then the board or health wardens or justices in session, as the case may be, may cause such house or place, or any contiguous house or place, to be vacated by other occupants for such time as the safety of the inhabitants shall require.

General vaccinations, how ordered and provided for.

10. The general or any special sessions, consisting of not less than seven magistrates, on requisition from the board of health, or whenever they think it necessary, may order a general vaccination in any county or any part thereof, and may make orders for providing for the expense of the vaccination of such poor and indigent persons as are unable to pay therefor.

Returns of poor persons vaccinated; remuneration.

11. All persons who shall vaccinate the poor and indigent, as above, shall return to the grand jury and sessions, along with the particulars of their accounts duly attested to, the names and ages of the persons vaccinated, and the date of their vaccination, and such accounts when examined and allowed shall be assessed for and paid as other county charges are.

Fish market may be opened.

12. Subject to the provisions of this chapter any corporation or individual may open a fish market, and sell fish in any part of the province.

CHAPTER 54.

OF RABID ANIMALS.

1. The justices in general or special sessions may from time to time make orders for the protection of persons from the bite of dogs or other rabid or diseased animals, for the destruction of all animals rabid or supposed to be rabid and running at large, and for the prohibition of the sale of the flesh of any animal affected by the symptoms usually attendant on canine madness, or otherwise diseased, and affix penalties for the breach thereof, not to exceed forty dollars for any one offence.

Sessions to make orders for preventing danger from rabid animals.

2. Any person may kill or destroy any dog or other rabid animal found at large, and may secure and place in confinement all dogs or other animals at large and appearing to be rabid, or exhibiting symptoms of canine madness.

Rabid animals at large may be killed; if suspected, may be confined.

CHAPTER 55.

OF NUISANCES.

1. The general or any special sessions may by order appoint health inspectors and define the limits of their respective jurisdictions, and may fix the time, not to exceed one year, for which such appointment shall be in force. Within the limits of the jurisdiction of commissioners of streets the commissioners shall exercise such powers instead of the sessions. All such inspectors shall be sworn into office.

Health inspectors how appointed; duration of office; limits of jurisdiction.

2. Every board of health, and in places where none exist three or more health wardens, and where neither exist a general or special session, shall constitute a court under this chapter, and all orders by the court shall be forthwith executed, notwithstanding any appeal therefrom.

Court how constituted.

3. Health inspectors for the purposes of this chapter shall have charge of all streets, highways, passages, vessels, wharves, docks, wells, markets and market places, common sewers, drains, vaults, privies, and other places, and shall cause all nuisances and filth to be removed therefrom or destroyed, and may open and enter all places where noxious substances dangerous to the public health may be reasonably suspected to exist, subject nevertheless to the control of the commissioners of streets if any there be in all things relating to public streets, sewers and drains within their jurisdiction, and to the control of the special court in all other matters.

Powers of inspectors.

CHAP. 55.

Duties of inspectors.

Their compensation and how provided.

Dwelling houses and their conveniences; penalty for not providing.

Privies and vaults, how to be constructed.

Privies and vaults, how cleansed when offensive.

Privies and vaults, how and when to be emptied.

Waste water to be disposed of as inspector shall appoint.

4. Health inspectors shall execute and enforce all sanatory orders to them directed under this chapter, or the several chapters relating to infectious diseases and rabid animals.

5. Every health inspector shall be entitled to such adequate compensation for his services and for charges incurred about his duties, as the justices in session or special court shall allow, and after deducting any sum collected and received under this chapter the balance if any due him, together with all other necessary charges and expenses incurred under this chapter, shall be added to the apportioned assessment upon such district or place, and assessed and levied thereon exclusively, and collected as the county rates now are.

6. Every dwelling house within the city of Halifax or elsewhere within the limits of a health inspector, shall be furnished with a suitable underground drain for carrying off waste water; also with a suitable privy and underground vault attached thereto; and the owner of such dwelling house who shall neglect to provide the same shall forfeit a sum not exceeding twenty dollars.

7. All privies and vaults shall be built so that the inside shall be at least two feet from the line of the adjoining lot, unless by consent of the owner thereof in writing, and shall be at least two feet distant from every street, lane, court, square, public place, or public or private passage way. There shall be no communication between a privy and any public sewer or drain. Every vault shall be tight and the contents shall not be allowed to be within two feet of the surface of the ground. But the special court may give other instructions relative to their construction.

8. When any privy or vault shall be reported offensive by the health inspector, the same within a reasonable time after notice in writing to that effect given to the owner or his agent or the occupant of the land where situate, may be ordered by the special court or health warden to be cleansed and disinfected at the expense of the owner, agent or occupant; and in case of neglect the same shall be done under the orders of the health inspector, who shall recover double the expense from the owner, agent or occupant, as a private debt.

9. No vault or privy shall be emptied without a permit from the health inspector where such is appointed, and in no case between the fifteenth day of June and the fifteenth day of September unless by order of the special court, and then only in cases where it is absolutely necessary.

10. All waste water shall be conveyed through drains underground to a common sewer, or to such reservoir as the health inspector shall appoint.

11. When it shall appear to the special court that any tenement used as a dwelling house is so unfit for that purpose that the public health is endangered thereby, the court may make an order in writing for its being vacated within a reasonable time to be therein prescribed; which order shall be served upon the inmates or left at such dwelling house, and in case of disobedience thereto or of a re-occupation of the dwelling house without a permit to that effect, the court may direct a warrant to the sheriff or constables or health inspectors to enforce compliance with the terms of such order.

CHAP. 55.

Dwelling
houses how
vacated when
public health
endangered.

12. Whenever it shall appear to the special court that any cellars, lots or vacant grounds are in a state likely to endanger the public health they shall cause a notice to be given to the owners or the occupants if any, and if there are no occupants and the owners do not reside within the jurisdiction of the court may give notice by advertisement in one or more public newspapers if any be there printed or by posting the same, publicly requiring such owners or occupants to remove such cause of complaint as in such notice prescribed; and in case of neglect the court shall order the same to be removed, and double the expense shall be recovered by the health inspectors from the owners or occupant of the land.

Cellars and vac-
ant lots how
cleansed.

13. No person unless specially licensed in that behalf shall put in any place on land or water any offensive matter or thing likely to endanger the public health, under a penalty not exceeding twenty dollars for each offence, and if any person shall suffer any such matter or thing to remain upon his premises after notice in writing requiring him to move the same, the health inspector may remove the same under the direction of the special court and at the charge of the owner or occupant of such place, and may recover double the expense as a private debt.

Offensive mat-
ter, penalty for
allowing; how
to be removed.

14. Any justice on the oath of one witness, may make an order in writing for the removal, burial, or destruction, of any offensive substance being or likely to become a nuisance in any place or in any boat or vessel, and may direct the same to be done by the party occasioning the offence, or by any other party whom the justice shall appoint, and the expense shall be recovered as in the order prescribed.

Justice may
make orders for
removing or de-
stroying offen-
sive substances.

15. No person shall sell, or offer for sale, or have in his possession in a public or private market or any other place for the purpose of sale, any unwholesome, stale or putrid article of food, under a penalty not exceeding forty dollars, and the article may be forthwith seized and destroyed by the health inspector.

Penalty for sale
of unwhole-
some food.

16. The board of health or general sessions may make orders for prohibiting the introduction into any city or town, and for preventing the sale and the offering for sale

Uncleaned fish
and offal how
prohibited.

CHAP. 56. of any kind of uncleansed fish, and for preventing persons from throwing offal into any place likely to be offensive or dangerous to the public health.

Limits for slaughtering animals to be regulated by sessions.

17. Justices in general or special sessions may from time to time make orders fixing the extent and limits within which the slaughtering and dressing of animals for food shall be prohibited or conducted, under penalties not to exceed forty dollars for any one offence.

Penalties how recovered.

18. All penalties and expenses incurred under this chapter shall be recovered in the name of the health inspector, and if there be none for the place then in the name of the clerk of the peace. In either case such inspector or clerk shall be a competent witness. The proceeds of every prosecution after first deducting all reasonable charges shall be paid into the city or county funds.

Forfeitures for violation of orders.

19. Any person who shall violate any of the orders made under this chapter, or shall obstruct any officer acting in discharge of his duty, shall forfeit a sum not exceeding forty dollars.

Limitation of actions; prosecutions removed to supreme court, how conducted.

20. No action shall be commenced against any person for anything done or omitted under this chapter unless brought within six months from the date of the offence charged, and whenever any conviction shall have been removed into the supreme court at Halifax or an appeal thereto granted it shall be the duty of the law officers of the crown to conduct the prosecution or defence as the case may be on behalf of the public.

Fish may be sold.

21. Any corporation or individual may open a fish market in any part of this province or vend fish therein, subject to the provisions of this chapter.

CHAPTER 56.

OF REGULATIONS CONCERNING THE PRACTICE OF PHYSIC AND SURGERY.

Persons entitled to receive fees.

1. No person shall recover any fee or reward for curing or attempting to cure any disease or for performing any surgical operation who shall not previously have obtained the degree of doctor of medicine, or a certificate of his competency to practice as a surgeon from some college or other public institution legally authorized to grant such degree or certificate, or who shall not have received a license under the hand and seal of the governor, after having been examined and reported duly qualified by competent persons appointed by the governor, which license shall specify that the person so licensed is qualified

to practice physic or surgery, or both; but nothing in this chapter shall extend to physicians or surgeons in the naval or military service of her majesty. CHAP. 57.

2. It shall be incumbent upon every person claiming to be a physician or surgeon or to have license to practice as hereinbefore mentioned, to produce and register in the provincial secretary's office in a book to be kept for that purpose the credentials under which he founds his claim to that character, and such book for registry shall be open to inspection at all times on payment of twenty cents.

Credentials to be registered in secretary's office.

3. Every person resident in the province and who shall have practised therein previously to the year 1821, shall on proof of that fact be entitled to receive a license to practice under the hand and seal of the governor.

All who have practised in province previous to 1821, entitled to license

4. Hereafter all provincial medical appointments and commissions shall be held only by medical men duly registered under the provisions of this chapter.

All provincial medical appointments to be held by persons registered. Penalty.

5. All persons professing to have medical or surgical degrees or a license to practice, save physicians or surgeons in her majesty's service, and not duly registered agreeably to these provisions, shall forfeit a penalty of twenty dollars for every such offence, and shall not be entitled to recover any fee or reward for professional services.

6. A copy of such credentials or report certified by the provincial secretary shall be received in evidence in all courts in this province in any action for the professional services of the party so registered.

Certified copy of credentials, &c., to be received in evidence.

TITLE XVI.

CHAPTER 57.

OF INDIANS.

1. The governor in council may appoint one chief commissioner for indian affairs, and such commissioner may appoint a deputy in each of the counties of this province, if he shall consider such appointment essential and necessary.

Commissioners and deputies, appointment of.

2. The governor in council may from time to time issue instructions to the commissioner for his guidance.

Instructions to issue.

3. In all cases of encroachment upon any lands set apart for indian reservations or for the use of the indians, it shall be lawful to proceed by information in the name

In case of encroachment information may issue.

CHAP. 57. of her majesty in the supreme court, notwithstanding the legal title may not be vested in the crown.

Special instructions to commissioners.

4. The commissioner shall communicate with the chiefs of the different tribes of the mic-mac race and explain the wishes of the governor, and invite their co-operation in the permanent settlement and instruction of their people, and shall parcel out a portion of the reservations to each family, with such limited power of alienation as may be authorized by the governor, and also shall aid them in the purchase of implements and stock, with such assistance as they may deserve, in the erection of a dwelling for the chief, a school-house and place of worship, and generally shall take such other measures as may seem necessary to carry out the objects of this chapter.

Education of indian children.

5. The commissioner may make arrangements with the trustees or teachers of any schools or academies for the board and tuition of indian children desirous of education, the expense to be paid out of the funds at his disposal.

Provisions for securing a permanent fund.

6. The commissioner may raise subscriptions and apply for charitable contributions to secure a permanent fund for the purposes of this chapter.

Reports of deputy commissioners, their contents.

7. The deputy commissioners shall at the close of every year furnish the chief commissioner for the information of the legislature with reports of their proceedings and an account of their receipts and expenditure, with the names of the chiefs for the time being, the numbers of heads of families settled and children educated, and generally such other information as may enable the governor and legislature to judge of the value and correctness of their proceedings.

Apportionment of provincial grant.

8. The money annually granted by the legislature for the benefit of the indians shall be paid to the chief commissioner, and shall be by him apportioned among his deputies in proportion to the number of families settled and resident in the several counties; provided that no pecuniary relief shall be given to any indian, but that the amount so granted shall be expended by the chief commissioner or his deputies under his directions in purchasing blankets or necessary clothing, and that such articles shall be distributed in such manner and to such extent as may be considered judicious and necessary in the several counties.

Governor may authorize surveys.

9. The governor in council may authorize surveys, plans and reports to be made of lands reserved for the benefit of indians, shewing and distinguishing the improved lands, the forests and lands fit for settlement, the intrusions and their nature and circumstances and such other information as may be required.

Commissioner of Indian lands, how appointed.

10. The governor in council may appoint commissioners for such lands who shall protect the same for the

benefit of the indians, superintend the survey, leasing and sale thereof when ordered under the provisions of this chapter, take charge of the interests of the indians generally within their respective limits, promote the settlement of the indians, and prevent trespassing on the reserves. CHAP. 57.

11. The commissioners under the direction and subject to the approval of the governor in council may agree with parties who are in possession of and have made improvements upon any portion of said reserves within their respective counties, either to lease or to sell to them the land held and occupied by them, agreeably to limits to be defined by the commissioners, for such rent or consideration money as they may consider reasonable and just; and upon their report approved by the governor in council the commissioner of crown lands is authorized to execute the necessary conveyances to them, the proceeds of such sale and the rents arising under the leases to be paid and applied as hereinafter provided. The increase of the authority hereby granted shall be discretionary with the commissioners; and the governor in council, according to each particular case, and in such cases of intrusion as are not deemed to justify the selling or leasing of the lands settled upon to the intruders, or in cases when an agreement cannot be entered into with them, it shall be the duty of the commissioners to take prompt measures for the removal of the intruders or occupants and applying the lands for the benefit of the indians.

Commissioners may make agreement with parties occupying and remove intruders, &c.

12. The proceeds arising from the sale of such lands shall be paid by the purchasers to the receiver general; and no conveyance shall be executed by the commissioner of crown lands until the receipt of the receiver general for the purchase money has been lodged with him. The rents and profits arising from leases of the said lands or otherwise shall be collected by the local commissioners, who shall semi-annually pay the same over to the receiver general.

Proceeds of sale to be paid to receiver general. Conveyance.

Rents, &c., how collected.

13. The costs of survey and other unavoidable expenses shall be paid by the receiver general from the proceeds of sale or rents and profits of such lands after the accounts thereof shall be approved by the commissioner of crown lands and audited by the financial secretary.

Expenses, how paid.

14. The receiver general shall keep a separate account of all monies received and paid by him on account of the said lands or their sales or rents and profits.

Receiver general to keep accounts.

15. All monies paid into the hands of the receiver general for the sale of indian lands shall bear interest at six per cent, which interest shall be chargeable on the general revenues.

Interest on monies.

16. The interest annually arising from the sales and the rents and profits aforesaid, deducting expenses, shall

Interest, how applied.

CHAP. 58. be applied to the exclusive benefit of the indians: first, for the relief of indigent and infirm indians; second, in promoting their settlement on the reserved lands, and in procuring seed, implements of husbandry, and domestic animals, as the governor may direct. The money shall be drawn from the treasury by warrant in favor of the local commissioners as required; the amount annually to be drawn shall not exceed the amount of the rents and profits realized from the reserves the preceding year; and the annual interest of the purchase money of the lands sold and paid into the treasury.

Monies—how drawn.

Surveys, payment of.

17. To provide for the surveys and carrying provisions of this chapter into effect, the governor in council may authorize the payment of such sums out of the treasury, which shall be refunded from the proceeds of the indian lands.

Entry on lands shall deprive of right to grant &c.

18. After the passing of this chapter any entry made by any person upon any part of the indian reserves with a view to acquire the possession or occupation of any lands not now in the possession or occupation of such person, shall disqualify the party so entering from receiving from the crown a grant of the lands so entered upon; and such intruder may upon complaint of any commissioner or commissioners be summarily removed from the lands so entered upon by the warrant of any two justices of the peace of the county where the lands lie.

Intruders, how removed.

Warrant when issued.

19. Such warrant shall not issue till after the party has been summoned in the usual form in cases of ordinary proceedings before justices of the peace, and the justices shall have power to award costs against the party complained of and to issue execution therefor.

Appeal.

20. The decision of the justices shall be subject to appeal as in ordinary cases.

TITLE XVII.

CHAPTER 58.

OF PUBLIC INSTRUCTION.

Executive council to form council of public instruction.

1. The members of the executive council shall form a council of public instruction, five of whom shall be a quorum.

Governor in council to appoint principal of normal school, &c.—salary.

2. The governor in council shall have power to appoint a principal of the normal and model school at a salary not exceeding twelve hundred dollars per annum, who shall appoint such assistants with the approval of the council of public instruction, as may be found necessary.

*Amended 1865.
Cap 28.*

*See also Cap
29 of act of 1860*

3. The governor in council shall have power to appoint CHAP. 58.
 a provincial superintendent of education, who shall also be
 secretary to the council of public instruction, at an annual
 salary of one thousand two hundred dollars, with travel-
 ling expenses and contingencies of office, not to exceed
 four hundred dollars, whose duties shall be as follows:—
 To inspect and examine annually all the county academies
 throughout the province, and as often as he may be required
 by the council of public instruction all schools receiving
 provincial aid, and make such enquiries and report respect-
 ing the qualifications of teachers and management of
 schools as he may think proper, under the directions of the
 council of public instruction. To promote the establish-
 ment of superior schools, to hold institutes of teachers and
 public meetings, to prepare printed instructions and blank
 forms for all purposes required under the law, and furnish
 them together with copies of this chapter gratuitously to
 the boards of commissioners and teachers, and to make
 annually for the information of the legislature a report on
 the state of the schools subject to his inspection, accom-
 panied by full statistical tables and detailed accounts of
 the expenditure of the monies appropriated by this chap-
 ter. To distribute all necessary blanks for the purposes of
 this chapter, and to make such suggestions on educational
 subjects as he may deem proper.

Governor in
 council to ap-
 point provincial
 superintendent
 of education;
 salary.
 Contingencies.
 Duties.

4. The council of public instruction shall have the
 general superintendence of the normal school, shall pre-
 pare and publish regulations under which money shall be
 drawn and expended and teachers classified, and shall
 make such general regulations for the guidance of school
 boards as may seem best fitted to bring about uniformity
 in their proceedings; shall appoint properly qualified per-
 sons to examine the students of the normal school for the
 purpose of awarding them certificates after the completion
 of their term of attendance, who shall be entitled to
 receive three dollars each per diem when engaged in the
 performance of that duty; shall recommend suitable text
 books and apparatus for all schools, as well as proper
 books for school libraries, and shall decide all cases of
 appeal from commissioners, trustees or teachers, and make
 such orders thereon as may be required.

Council of in-
 struction to
 superintend
 normal school
 —make regula-
 tions, appoint
 examiners, &c.

5. The council of public instruction shall appoint an
 inspector of schools for each county of this province upon
 the recommendation of the superintendent of education,
 who shall be the secretary and clerk of the board of com-
 missioners: his duties shall be to visit and examine half-
 yearly each school within his county, report fully upon its
 condition to the commissioners in conformity with instruc-
 tions received from the superintendent, furnish the trustees
 and teachers such information as they may require respect-
 ing the operation of this chapter and the performance of

Council of in-
 struction to ap-
 point inspect-
 ors of schools.

His duties.

CHAP. 58. their duties, have the charge and management of all school books belonging to the board, promote the advancement of education by holding public meetings and diffusing such information as shall further that object, as also the improvement of school houses and all appertaining thereto, and generally aid the superintendent in carrying out a uniform system of instruction.

Inspector to give bond.

6. The inspector shall give a bond in double the sum of money allotted to the county or district to her majesty with two sureties for the faithful performance of his duties; and he shall keep the accounts, monies and records of the board of commissioners.

Pay of Inspectors.

7. The inspector shall receive from the commissioners five per cent on the actual disbursements, and in addition thereto one dollar and fifty cents for each half-yearly visit to each of the schools in his district.

Governor in council to appoint county commissioners

8. The governor in council shall appoint seven or more commissioners for each of the counties and districts named in annexed schedule B, who shall form a board of school commissioners, of whom five shall be a quorum. Members of the legislature, the clergy, and magistrates within each county shall be visitors of schools.

Visitors of schools.

Meetings of commissioners.

9. The commissioners shall meet on the first Tuesday in May and November, and where there are more than one school district in a county the council of public instruction shall fix the time for the meeting of the board of commissioners.

Election of chairman.

Special meeting

10. The chairman shall be elected annually at the meeting in May, and shall call a special meeting when required by two members of the board, or when directed by the council of public instruction.

Commission of revisal, how formed, &c.

11. The chairman of the board, the inspector of schools, and a deputy surveyor of crown lands, shall form a commission to revise and re-arrange each school district in schedule B into sections, subject to the approval of the council of public instruction, who shall have power to confirm, amend or direct a re-arrangement; provided the expense for laying out such sections does not exceed the sum of forty dollars for any one district, the accounts to be approved by the board and paid from the provincial treasury.

Accounts, how paid.

School sections how laid off.

12. The above special commissioners shall have due regard to the number of children and to the ability of each section to support an efficient school; towns and villages the population of which is less than four thousand not to be divided, unless by special direction of the council of public instruction; no more than one school shall be held in one school section, unless in cases where upon the recommendation of the inspector of schools for the district the council of public instruction shall permit separate schools for the different sexes; the sections thus laid off

shall be numbered and specifically described in a report to be submitted to the board of school commissioners at the meeting in November, due publicity by advertisements signed by the inspector posted in at least three of the most public places, having previously been given within each section of the bounds thereof. CHAP. 58.

13. It shall be competent for the board of commissioners with the sanction of the council of public instruction, to make such alterations in the allocation of the sections as may at any time be required at a regular semi-annual meeting of the board. Board of commissioners may alter sections.

14. The board of commissioners shall appoint a committee of three examiners for each school district, one of whom shall be the inspector of the district, whose duty it shall be to examine all applicants for license to teach, in accordance with the qualifications of each class of teachers, prescribed by the council of public instruction, and grant the same to those found qualified, satisfactory evidence of good moral character having previously been given; and no teacher shall without such license receive any portion of the sums granted for the support of academies, superior or common schools—said committee to receive at the rate of two dollars per diem for every day they meet. To appoint committee of examiners: their duties, &c.

Remuneration

15. If any teacher holding a license shall become guilty of drunkenness or other gross immorality, the commissioners shall cancel his license, and notify him and the trustees of any section in which he may be employed of the same, such teacher to draw no portion of the sum granted by this chapter for any time after his license has been thus cancelled. Drunkenness, &c., of teachers, how punished.

16. The clerk of the board of commissioners shall pay the sums allotted to the teachers personally or upon their written order so soon as practicable after they are due. Payment of teachers.

17. The sum of seven thousand two hundred dollars shall be granted annually towards the support of county academies, to be constructed and located in accordance with the directions of the council of public instruction, and to be applied as specified in schedule A; the sum of seven thousand two hundred dollars for superior schools, to be constructed and located by the council of public instruction, to be provided in the proportion of four hundred dollars for each county, each school to receive not less than one hundred dollars, and the further sum of fifty-eight thousand eight hundred and eighty dollars towards the support of common schools as specified in schedule B; and when in any county the sum granted for academies shall not be drawn, one-half the said sum shall be appropriated to aid the superior schools established in such county, and the remaining half to the common school fund for said county. Annual grant to county academies, how applied.

Annual grant to superior schools, how distributed, &c.

When academy money undrawn, how appropriated.

CHAP. 58.

Common schools monies, how appropriated.

18. One-fifth of the whole sum appropriated for common schools shall be applied to aid poor and scattered sections in addition to the amount to which they may be otherwise entitled on such terms as the commissioners shall decide, the remainder to be distributed among the sections when suitable school houses are provided in such manner that teachers of the same class shall receive at the same rate; that second class teachers shall receive not more than three-fourths of the amount paid to first class teachers; third class teachers one-half of the sum given to first class teachers; provided that in cases where the inspector shall report that the teacher has not sustained the standing as a teacher indicated by his license, then it shall be competent for the commissioners to withhold the provincial grant in whole or in part.

Monies, how drawn.

19. The commissioners shall draw half-yearly the before mentioned sums allowed under this chapter, and in addition thereto the amount necessary to pay to the inspector one dollar and fifty cents for each half-yearly visit actually made to each of the schools within the county or district; and they shall be entitled to allow not more than twenty dollars per annum of the provincial allowance to the clerk for stationery and five per cent on the disbursements.

Twenty-five per cent. additional to school supported by assessment—Proviso.

20. The commissioners shall allow twenty-five per cent to all schools supported by assessment in addition to the amount to which they would otherwise be entitled; provided the inspector shall report that instruction has been impartially afforded to all seeking it.

Commissioners may hold real estate in trust for school purposes.

21. Any person may convey or devise real estate to the commissioners for any district, and duly vest in the commissioners and their successors in office the legal estate therein in trust for the purpose of erecting and keeping in repair a school-house thereon; and the commissioners may sue and be sued in respect thereof, but shall have no control over any school-house on such lands, as against the trustees of the school section or the inhabitants, other than may be expressed by the conveyance or devise.

Commissioners to make returns annually before first December.

22. The commissioners shall on or before the first day of December in every year, make a return to the financial secretary of their proceedings, and of the monies by them received and distributed and such other returns as may be directed by the council of public instruction, and shall certify that the same is, to the best of their belief correct in every particular, and that they have distributed the provincial money impartially and faithfully.

Annual school meeting; where and when held.

23. The annual school meeting for the appointment of trustees and other school business shall be held in the school house of the section, or if none, in any other convenient building on the last Tuesday in October. The first meeting succeeding the passing of this chapter shall

be convened by the clerk of the commissioners, and all succeeding meetings by the trustees, or where none exist by the clerk, by notices posted in three of the most public places, at least three days previously, signed by the clerk or trustees as the case may be.

24. At the first annual meeting under this chapter, three trustees shall be appointed in each section, and at each annual meeting thereafter one of the trustees first elected shall go out of office by ballot, and another shall be elected in his room; provided always that he may be re-elected with his own consent. Any person appointed a trustee and refusing to act shall forfeit the sum of ten dollars.

25. At every annual meeting the majority of the freeholders and householders present shall elect one of their number to preside over the meeting, and shall appoint a secretary to record its proceedings; and the chairman shall decide all questions of order, and shall take the votes of ratepayers only, and shall give a casting vote in case of an equality of votes. Ratepayers in this chapter shall mean the persons whose names are included in the last county rate roll for the district rated in respect of real or personal property, but shall not include persons rated only for poll tax.

26. The annual meeting shall receive the report of the trustees as to the state of the school, and the funds required for its support in the ensuing year, and the majority shall decide as to the manner in which such support shall be raised, whether by subscription or assessment; and in case it is decided to raise the required funds by subscription, and the sum subscribed for the support of the school fails to be realized, the balance shall be raised by assessment in manner as hereinafter mentioned, the amount previously paid being taken into consideration; and if a majority present agree to raise money for the support of one or more schools by assessment, or for the purchase of lands whereon to erect school houses, or for the building or repairing them, they shall then appoint three assessors who shall forthwith assess the amount upon the inhabitants of such section by an equal rate upon such section to be imposed according to the assessment roll for the year, to be furnished by the clerk of the peace for the county or district in which such school district shall be situate, and shall be collected by a collector, to be also appointed at such meeting under a warrant to be signed by the assessors, and in default of payment to be collected under and subject to the provisions of chapter of the revised statutes, of "county assessments," and of any acts in amendment thereof; and such assessors shall return such assessment to the general sessions or to any special sessions held for that purpose, when appeals shall be had

CHAP. 58.

By whom and how convened.

Trustees, how appointed.

Penalty for refusing to act.

Chairman and secretary, how appointed.

Rate payers, definition of.

Annual meeting to receive the report of trustees, and decide how school shall be supported, &c.

To appoint assessors if required.

Assessment how made.

How collected

CHAP. 58. and determined, and when in accordance with the instructions and regulations of the council of public instruction the school-house or houses in any district shall be declared unfit for use by the school commissioners, the trustees shall be authorized to raise the sum required for the building by assessment on the real and personal property of the inhabitants of the district.

Trustees may assess for buildings when required.

Qualification of voters.

Declaration.

Penalty for false declaration.

Trustees to be body corporate.

Trustees may appoint secretary.

His duties and remuneration.

Duties of trustees.

27. If any person offering to vote at an annual or other school section meeting shall be challenged as unqualified, the chairman presiding at such meeting shall require the person so offering to make the following declaration: "I do declare and affirm that I am a ratepayer in this school section and that I am legally qualified to vote at this meeting"; and every person making such declaration shall be permitted to vote on all questions proposed at such meeting, but if any person shall refuse to make such declaration his vote shall be rejected, provided always that every person who shall wilfully make a false declaration of his right to vote shall be deemed guilty of a misdemeanor and punishable by fine or imprisonment at the discretion of the court, or by a penalty of not less than five or more than ten dollars, to be recovered by the trustees of the section for its use as a private debt under clause eight of chapter one of the revised statutes.

28. The trustees of any section shall be a body corporate for the prosecution and defence of all actions relating to the school or its affairs and other necessary purposes, under the title of trustees of section No. —, in the county [or district] of —.

29. It shall be the duty of the trustees to appoint one of themselves or some other person to be secretary of the board of trustees, whose duty it shall be to keep the accounts, monies and records of the board, and to collect and disburse the school monies as directed by a majority of the trustees, who shall receive five per cent. commission on all sums collected by him for school purposes and his duty shall be to keep the school in repair and supply it with comfortable furniture, out-houses, fuel and apparatus.

I. To take possession of and hold as a corporation all the school property of the section (but not to interfere with any private rights or the property of any religious denomination,) or which may be purchased for or given to it for the use or support of common or superior schools, and if necessary to lease or rent land or buildings for school purposes for a period not less than five months.

II. To contract with and employ a licensed teacher or teachers for the section for a period of not less than five months, and to determine the amount of his or their salaries, which must be procured from the people by voluntary subscription or assessment, and not by fees per

pupil. All common schools shall be free to all the children residing in the section in which they are established. CHAP. 58.

III. To visit the school at least four times in each year, and to be present when practicable at the semi-annual examinations, and to prepare or have prepared a true return of the state of the school, according to the form prepared for that purpose by the superintendent, and to forward the same to the commissioners at the close of each half year.

IV. To take due care of the portion of library books allotted to the section, and return the same to the clerk as directed in the rules for libraries.

V. If any trustee shall sign a false return tending to procure for the section an undue share of the public aid, he shall forfeit the sum of twenty dollars, to be recovered by the clerk of commissioners for school purposes, and if any dispute arise between the trustees and teacher respecting the teacher's salary or duty, it shall be referred for decision to the board of commissioners.

False return by trustees, penalty for.

30. If the section be entitled to a superior school or to more than one school, the trustees of the section shall be trustees of all such schools, and no section shall have more than one board of trustees.

To be trustees of superior schools.

31. In case no annual meeting shall be held by trustees it shall be competent for the inspector to call such meetings twenty days thereafter.

When no meeting held, inspector may call meeting.

32. No person shall be deemed a qualified teacher under this chapter, or receive any portion of the school grant unless he hold a license from the commissioners of the county or district in which he is employed; it shall be the duty of every such teacher:

Qualified teacher must hold license.

I. To teach diligently and faithfully all the branches required to be taught in his school and to maintain proper order and discipline therein according to his engagements with the trustees and the provisions of this chapter.

His duties.

II. Not to attempt establishing a school in any section without in the first place making an agreement with its trustees, and if there be no trustees to notify the clerk of the same, that trustees may be legally appointed.

III. To keep an accurate register of the daily attendance of the pupils, the register to be at all times open to the inspection of commissioners, inspectors, visitors and trustees.

IV. To have at the end of every half-year a public examination of his school, of which he shall give notice through the pupils to the parents and trustees and to school visitors resident in the section.

V. To give notice of school meetings advertised by the clerks or trustees through his pupils.

VI. To furnish the trustees, commissioners or superintendent with any information that may be in his power

CHAP. 58. respecting anything connected with the school, or affecting its interests and character.

VII. To sign a certificate attached to the return, truly stating that no part of his salary has been collusively withheld, and that the engagements made by the trustees have been carried out in good faith; and any teacher signing a false certificate shall be liable to a fine of twenty dollars, to be recovered by the clerk, and applied for school purposes.

VIII. To inculcate by precept and example a respect for religion and the principles of christian morality.

Superintendent and teachers exempt from militia duty, &c.

33. The superintendent and licensed teachers while employed as such shall be exempt from militia duty, and from serving in any town office or on juries.

Allowance for school libraries how drawn and appropriated.

34. The council may draw from the treasury a sum not exceeding sixteen hundred dollars, and apply the same in proportion to population for the establishment of school libraries in central and suitable places in each county under such regulations as the council of public instruction may deem proper, to be under the charge and control of the commissioners, and open to the inspection of the superintendent—provided that an equal amount be raised by the people themselves and appropriated to the same purpose; the books to be selected by the commissioners with the approval of the council of public instruction.

Proviso.

Governor may advance \$2400 for purchase of school books, &c.

35. The governor may advance upon the requisition of the council of public instruction the sum of two thousand four hundred dollars, to be expended in the purchase of such improved school books, maps, apparatus and educational reports as the superintendent may select with the sanction of the council of public instruction, to be distributed among the boards of commissioners of the respective districts in the same proportion as the money appropriated for common schools is divided, and to be gratuitously distributed by the commissioners among such schools as they may deem necessary.

How distributed.

Date of operation of chapter.

36. This chapter shall come into operation on the first day of May next, but existing arrangements shall not be interfered with, and all officers shall remain in office until superseded by the operation of this chapter or under its authority.

SCHEDULE.

A.

COUNTY ACADEMIES.

<i>County of Queen's county,</i>	Six hundred dollars.
<i>County of Annapolis,</i>	Six hundred dollars.
<i>County of Lunenburg,</i>	Six hundred dollars.
<i>County of Cumberland,</i>	Six hundred dollars.
<i>County of Digby,</i>	Six hundred dollars.

<i>County of Yarmouth,</i>	Six hundred dollars.
<i>County of Shelburne,</i>	Six hundred dollars.
<i>County of Guysborough,</i>	Six hundred dollars.
<i>County of Cape Breton,</i>	Six hundred dollars.
<i>County of Inverness,</i>	Six hundred dollars.
<i>County of Richmond,</i>	Six hundred dollars.
<i>County of Victoria,</i>	Six hundred dollars.

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B.

COMMON SCHOOLS.

Cape Breton county.—Three thousand seven hundred and fourteen dollars.

King's county.—Three thousand three hundred and thirty-two dollars.

Queens county.—One thousand six hundred and sixty-seven dollars.

Richmond county.—Two thousand two hundred and forty-four dollars.

Antigonish county.—Two thousand six hundred and forty-seven dollars.

Victoria county.—One thousand seven hundred and seventeen dollars.

City of Halifax.—Four thousand four hundred and fifty-nine dollars.

Rural, shore and western districts.—Four thousand two hundred and sixty-five dollars, to be divided among the existing districts according to population.

Annapolis county.—Two thousand nine hundred and eighty-two dollars, to be divided among the existing districts according to population.

Colchester county.—Three thousand five hundred and sixty-eight dollars, to be divided among the existing districts according to population.

Cumberland county: Western district.—Six hundred and ninety-two dollars. *Eastern district.*—Two thousand seven hundred and seventy-five dollars.

Digby county.—Two thousand six hundred and twenty-five dollars, to be divided among the existing districts according to population.

Guysborough county.—Two thousand two hundred and sixty-four dollars, to be divided among the existing districts according to population.

Hants county.—Three thousand one hundred and eight dollars, to be divided among the existing districts according to population.

Inverness county.—Three thousand five hundred and fifty-five dollars, to be divided among the existing districts according to population.

Lunenburg county.—Three thousand four hundred and

CHAP. 59. ninety-one dollars, to be divided among the existing districts according to population.

Pictou county : North district.—Two thousand four hundred and forty-two dollars. *South district.*—Two thousand six hundred and eighty one dollars.

Shelburne county.—One thousand nine hundred and two dollars, to be divided among the existing districts according to population.

Yarmouth county.—Two thousand seven hundred and fifty dollars, to be divided among the existing districts according to population.

TITLE XVIII.

OF HIGHWAYS, STREETS, BRIDGES, PUBLIC LANDINGS AND FERRIES.

CHAPTER 59.

OF THE LAYING OUT AND MANAGEMENT OF CERTAIN GREAT ROADS.

Roads to which
this chapter
applies.

1. The provisions of this chapter shall extend to the following roads only, viz.: The main post road from Halifax to Pictou, thence to Antigonish, Guysborough and St. Mary's; the great eastern road from Halifax to Saint Mary's; the eastern shore road from Dartmouth to Saint Mary's; the road from Antigonish to Port Mulgrave by Auld's and Cape Poreupine, and also from Black Bridge, Tracadie, to Port Mulgrave; the road from Guysborough to the Strait of Canso; the road from McMillan's, east side of the Strait of Canso, to Saint Peters, thence by the Bras d'Or to Sydney, and thence to the Sydney mines, Boulardarie, Baddeck, Middle River and Margaree, thence to Broad Cove, Port Hood and McMillan's, at the Strait of Canso, thence to Baddeck by Victoria road; the road from Arichat to Grandance; the road from Truro to Amherst, and thence to the boundary of the province; the road from Truro to Amherst by Tatamagouche; the road from Amherst to Parrsborough; the road from Pictou to Tatamagouche; the road from Halifax to Windsor, thence to Kentville, Annapolis, Digby, Yarmouth, Shelburne and Liverpool; the road from Liverpool through Middlefield, South Brookfield, Harmony, Kempt, and Maitland to Annapolis; the road from Liverpool to Mill's

Village, thence to Bridgewater and Mahone Bay, and thence to Chester and Windsor; the road from Chester to Halifax by Saint Margaret's Bay; the road leading from the Kempt road, in the county of Richmond, to West Bay, thence by the same road to Saint Peters, thence to Grand River, thence to Louisburg by Saint Esprit. CHAP. 59.

2. Commissioners to expend monies for the opening of new roads or altering old ones when it shall be necessary to cross private lands for that purpose, the proprietors whereof claim damages, shall if deemed for the public benefit, make an agreement in writing with the proprietors, the agreement to state the length of the road and the amount agreed on for damages and cost of fences, and to have a plan annexed of the road and land through which it is intended to be carried; and the same shall be laid before the general sessions of the peace for the county or district or a special sessions, and also a statement of expenses and charges attending the same; and if the sessions approve of the agreement or portions thereof they shall return the same with their certificate to the provincial secretary's office, to be laid before the house of assembly, and the house having considered may confirm the agreement or any portion thereof, in which case the same shall be returned to the provincial secretary's office; and the governor may draw warrants on the receiver general for one-half the amounts which may be confirmed, and the other half thereof shall be a charge upon the county or district within the limits of which such damages have been incurred.

Private lands
when crossed
by agreement.

3. When no agreement shall be made or any part thereof shall not be confirmed one appraiser shall be appointed by the governor in council, a second by the persons interested in the lands, and on their default after three days notice by the commissioner; and a third shall in any case be appointed by the commissioner, and the three appraisers shall be sworn to the faithful discharge of their duties, and shall enter upon the lands and lay out the road in the manner most advantageous to the public and least detrimental to the persons interested in the land, and measure and mark the same and appraise the lands, taking into account the improvement, and assess the damages to the owners and tenants therefor, and for fencing the sides of the road, which appraisement shall be reduced to writing and accompanied by a plan and admeasurement of the road, shall be returned to the clerk of the peace, to be laid before a general or special sessions, and further proceedings shall be had thereon in conformity with the provisions of the last section.

Mode of pro-
cedure when no
agreement can
be made.

4. Any person interfering or obstructing such commissioners or appraisers in the discharge of their duty shall be amenable to the provisions and penalties of chapter twenty-nine, section fourteen.

Penalties for
obstructing.

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Commissioner may proceed immediately upon agreement or appraisalment.

Fences to be made before compensation.

Damages from treasury restricted to roads described in first section.

Width of road.

Site of roads, when held as surrendered.

What roads to be under charge of governor in council, viz.:

Great eastern road.

Road from Truro to frontier of New Brunswick.

Eastern shore road.

New Guysboro' road.

Southern shore

Great western road.

Road from Liverpool to Annapolis.

5. After any agreement shall have been made or an appraisalment had under the second or third sections, the commissioner may enter upon the lands and proceed with the road, leaving the compensation to be paid to the proprietor to be finally determined in the manner in such sections respectively directed.

6. No payment for fences shall be made under this chapter until the proprietors of the land shall have made oath that the same has been put up in a proper manner and at least thirty-three feet from the centre of the road, and enclose in whole or in part some of his lands, and that the same shall not be removed with his assent, nor shall any compensation for such fencing be made unless claimed within one year after the road shall have been opened.

7. No money shall be drawn from the provincial treasury for damages on the completion or running out of any new road or alteration of any old one, other than on the roads specified in this chapter.

8. The road shall be at least sixty-six feet in width.

9. When any road has been or shall hereafter be made or altered without any demand for compensation by the proprietors of land through which such road runs within one year from the opening thereof, such acquiescence on the part of the proprietors shall be held a voluntary surrender to her majesty forever for a public highway of all the land through which the new road passes to the breadth of sixty-six feet.

10. The governor in council may assume the charge and management of the undermentioned great roads, that is to say:

First. The great road east from Halifax to Sydney, Cape Breton, passing through the counties of Halifax, Colchester, Pictou, Sydney, Inverness, Richmond and Cape Breton.

Second. The great road north, from Truro to the frontier of New Brunswick.

Third. The eastern shore road, from Dartmouth to Ship Harbor.

Fourth. The new Guysborough road, from the Point of intersection with the great eastern road at Rutherford's to dividing line between the counties of Halifax and Guysborough.

Fifth. The southern shore road from head of North West Arm to dividing line between the counties of Halifax and Lunenburg.

Sixth. The great western road from the city of Halifax to Avon bridge in the county of Hants.

Seventh. The road from Liverpool through Middlefield, South Brookfield, Harmony, Kempt and Maitland, to Annapolis.

11. The governor in council may lay off the great roads herein mentioned in convenient sections, not exceeding one hundred miles, and appoint one supervisor for each of the sections so laid off and determined. CHAP. 59.

Governor in council to lay out roads and appoint supervisors.

12. Such supervisors when duly commissioned and appointed shall have the general charge and superintendence of the sections of great road which shall be respectively entrusted to their care. Supervisors, their authority.

13. The supervisors shall be entrusted with the expenditure of whatever sums are annually voted by the legislature for the maintenance, repair and improvement of such great roads—the power of the legislature to subdivide and apportion the great road monies not being impaired by this chapter. To expend money.
Apportionment of road monies by legislature not impaired.

14. In the expenditure of such monies, and in the mode of accounting for the same, (except in so far as the law may be varied by any order in council which may be hereafter made and promulgated) the supervisors shall be guided and bound by the laws of this province, and (except when restrained by any order in council) shall possess and exercise all the powers now by law possessed and exercised by commissioners of highways. Mode of expenditure.

15. It shall be the duty of such supervisors to furnish annual reports of the state, condition, and requirements of the sections of roads committed to their charge, with suggestions for their improvement and detailed estimates of the probable cost of the alterations and improvements so suggested. Supervisors to furnish report.

16. It shall be lawful for the governor in council to issue from time to time such orders and instructions to the supervisors as may seem meet; such orders and instructions to be laid before the legislature within ten days of the opening of the next session, and to have the force of law until the same shall be disapproved. To be governed by order from governor in council; such orders to be approved by legislature.

17. The rate of remuneration to the supervisors to be appointed under this chapter shall in no case exceed the amount of commissions which is now by law given to commissioners of roads, except where surveys of new and important sections of roads are made, and then they shall be entitled to charge at the same rate as is now paid to surveyors for the like service. Remuneration of supervisors

18. All road work shall be done by tender and contract, except where the expenditure of the money by days' work may be more advantageous to the public, and so testified to by the supervisor. Road work to be done by contract, or day's labor.

CHAP. 60.

CHAPTER 60.

OF LAYING OUT ROADS OTHER THAN CERTAIN GREAT ROADS.

Roads to which
this chapter
applies.

Mode of laying
out new or alter-
ing old roads.

Persons ap-
pointed to re-
port to sessions.

To make agree-
ment with pro-
prieters.

To annex plan.

When no agree-
ment made, ap-
praisers to be
appointed and
sworn.

Notice to absent
proprietors.

When more
than one pro-
prieter—apprai-
sers how appoint-
ed.

1. The provisions of this chapter shall be applicable to roads other than those mentioned in the last chapter.

2. Twenty or more freeholders of the county or district may petition the sessions for the making of a new road or the alteration of an old one, and the sessions if satisfied of the propriety thereof shall order a precept to be directed to one or more competent persons, directing him or them within a convenient time to examine into the propriety of the desired new road or alteration, and if satisfied thereof to lay out and make the same in the way most advantageous to the public and least prejudicial to the proprietors of lands through which the same shall pass.

3. The persons so appointed shall examine into the propriety of such road, and if by them deemed unnecessary shall report the same to the sessions, and if deemed for the public benefit may lay out and mark the same, and may make an agreement in writing with the proprietors of the land through which the same shall run, which agreement shall state the length of the road and the amount agreed on for damages to soil, improvements and costs of fencing respectively, and shall have a plan annexed of the roads and lands through which it shall run, to be filed with the clerk of the peace, with a full return of proceedings thereon, to be laid before the sessions.

4. When no agreement shall be made one appraiser shall be appointed by the custos of the county, another by the owner or owners of the land, and on their default after three days notice by the persons who shall have laid out the road, who in any case shall appoint a third, and the three appraisers shall be sworn before a justice of the peace to the faithful discharge of their duty, and shall enter upon the lands and appraise the damages to the owners for soil, improvements and fencing respectively, which appraisement shall be reduced to writing and shall be returned to the clerk of the peace accompanied by a plan and admeasurement of the roads, to be laid before the sessions.

5. If the proprietor of the land be absent from the province no notice need be served, and if he be absent from the county and within the province a notice may be forwarded to him by mail, and if after fifteen days he shall not appoint an appraiser the custos is authorized to appoint in either case an appraiser for the absent proprietor.

6. When the road shall run through the lands of more than one proprietor such of said proprietors who shall not enter into an agreement as provided by this chapter shall

join in the appointment of one appraiser for the purpose of appraising damages to their respective lands, together with the two appraisers to be appointed as in the said chapter provided, and in case of the said proprietors disagreeing or neglecting or refusing so to do after seven days notice, the custos shall appoint one arbitrator, whose acts shall be binding on such proprietors touching such damages as if they had joined in such appointment. CHAP. 60.

7. The clerk of the peace shall post notices containing the substance of such returns, in at least six places of public resort in the county or township, and also near the contemplated new road or alteration, for the space of thirty days previous to the next sessions. Clerk of peace to post notices of new roads or alterations.

8. At the next general sessions or any special sessions called for that purpose, the proceedings shall be considered and objections if any heard thereto, and the sessions shall then confirm or disallow the proceedings, and if confirmed they shall be recorded. Sessions to confirm or disallow proceedings.

9. The persons appointed under the second section in making their appraisal in case of alteration of a road, may apportion the old road or parts thereof to proprietors of lands through which the alteration runs and put a value thereon as compensation in whole or in part for the land taken for the alteration, and shall include the same in their return, but the land so apportioned must run through or adjoin the lands of the proprietor to whom it is apportioned. Appraisers to apportion old roads.

10. The persons appointed under this chapter to lay out any new road or alter any old one, may lay out the same of a less width than sixty feet if they shall consider such less width sufficient for the public convenience, and the sessions may confirm or disallow the same. New roads, &c., width of.

11. When the proceedings shall be finally confirmed the land apportioned under the last section shall become the absolute property in fee of the person to whom the same shall have been allotted; but it shall not be shut up or the public excluded from the free use thereof until closed by order of sessions under the law in reference to the closing of old roads. Land apportioned to become property in fee of person to whom allotted.

12. The damages appraised and expenses incurred shall form a county charge. Damages and expenses to be a county charge.

13. In case of confirmation the proprietors of the land shall be entitled to receive compensation for fencing on making oath that the fence has been put up at least half the full width of the road from the centre thereof, as so laid out, such oath being in other respects conformable to the provisions of this chapter. Compensation to proprietors, when made.

14. Where roads have been or shall hereafter be altered or made without any demand for compensation made by proprietors of land through which the new road runs within one year from the opening thereof, such acqui- Sites of roads when held as surrendered.

CHAP. 61. essence on the part of the proprietors shall be held a voluntary surrender to her majesty forever for a public highway of all the land through which the new road passes to the width to which the said road was originally laid out.

Open and pent roads, how laid out.

Damages to be a county or district charge.

Gates on private ways by order of sessions.

Penalty for breach of regulations.

Fences to be made before compensation.

Public landings—making of.

Quantity of land for.

Justices of peace ineligible for appointment.

15. The sessions may order the laying out of a private way either open or pent in the same manner as above prescribed, except that the application for such road need not be by twenty freeholders, and the damages in such case or in any case where they have been hitherto allowed and have not been paid by the poor district through which the road runs, shall form a county or district charge, or shall be borne by the applicants, as the court in confirmation may order.

16. The sessions may direct gates to be placed on private ways and make regulations respecting the placing and keeping thereof, and persons guilty of a breach of the regulations shall for every offence forfeit not less than one dollar nor more than eight dollars.

17. No compensation for fencing shall be made under this chapter until the proprietors of the land shall have made oath before a justice that the fence has been put up in a proper manner, and at least one-half of the whole width from the centre of the road, and encloses in whole or in part some of his lands, and that the same shall not be removed with his assent.

18. A public landing upon the shore of any navigable water may be established or altered by the same means and in the same way as a new road may be made or an old one altered under this chapter, and in so far as the same may be applicable the provisions of this chapter shall extend to such landings and to roads connecting the same with the queen's highway.

19. Any public landing laid off or established under this chapter may include so much land as in the opinion of the committee may be sufficient for the purposes of such landing, not to exceed in all one acre.

20. No justice of the peace shall be appointed to act under the second section of this chapter.

CHAPTER 61.

OF SUBSCRIPTIONS TO PUBLIC WORKS.

Subscribers to public works to be liable without consideration in agreement.

1. Whenever any subscription shall be opened and made in aid of the erection of any road, bridge, place of worship, school house, or for any other undertaking of public utility, or which may be designated in the subscrip-

tion list as or appears to be a public undertaking, and such CHAP. 62.
undertaking shall be commenced, every person who may have engaged by written subscription to contribute money, labor, or other aid towards the undertaking, shall be held legally liable and bound to perform his engagements, notwithstanding any apparent want of consideration in the agreement for the same.

2. In case of public grants made in aid of such undertaking, the commissioner or other person appointed to expend such grant, or where no public grant shall be made then the person to whom the performance or superintendence of such undertaking may have been entrusted or the person who may himself have engaged in and be then carrying on such undertaking, may require all persons who may have so subscribed to perform their engagements; and in case any subscriber shall after a written notice of at least one month refuse or neglect so to do, he may be sued by such commissioner or other person hereinbefore mentioned, or the person to whom such subscription may be payable as if such subscription were a private debt of the like amount; but nothing in this chapter shall be construed to bind or make liable the estate of the executors or administrators of any subscriber unless they be specially named in the instrument subscribed by him.

Commissioner, &c. may enforce payment of subscription after notice, &c.

Not to extend to estates of subscribers, unless, &c.

3. All monies or other aid so subscribed and recovered shall be applied and expended for the purpose for which the same shall have been so subscribed, and for no other purpose whatever.

Monies recovered—how applied.

CHAPTER 62.

OF HIGHWAY LABOR.

1. The districts as now established for the performance of statute labor on the highways are confirmed, and the sessions may erect new districts or alter the limits of those now established.

Districts confirmed and session to make new.

2. Every male between the ages of sixteen and sixty, being able to do a reasonable day's work, shall be liable to perform two days labor as a poll tax.

Persons liable to two days work.

3. All males whose names are included in the assessment roll and assessed for any sum over two hundred dollars, shall be liable to perform in addition according to the following scale:—

Scale of additional work.

One hundred to two hundred dollars one day,
Two hundred to four hundred dollars three days,
Four hundred to six hundred dollars four days,

1865 "Capt. Sec 4. - Chapter 62, of Highway Labor is amended as follows: - Sec 2. The basis for the scale

CHAP. 62.

Six hundred to one thousand dollars five days,

One thousand to one thousand four hundred dollars six days,

One thousand four hundred to one thousand eight hundred dollars seven days,

One thousand eight hundred to two thousand two hundred dollars eight days,

Two thousand two hundred to two thousand six hundred dollars nine days,

Two thousand six hundred to three thousand dollars ten days,

Three thousand to three thousand five hundred dollars eleven days,

Three thousand five hundred to four thousand dollars twelve days,

And above four thousand at the rate of a day to every thousand dollars.

Males over
sixty years.

4. Males over sixty years of age holding property assessed for a sum less than one thousand dollars shall be exempt from the performance of statute labor, but such persons holding property assessed for over one thousand dollars shall be liable for the performance of statute labor in respect of such excess, and in computing the number of days to be performed the amount shall be calculated by the scale, beginning at one thousand dollars and proceeding thereon to the amount contained in the roll.

Persons ex-
empt.

5. Persons holding commissions in the military or civil department of the army, and enrolled volunteers classed as effectives, firemen and enginemen, clergymen and ordained ministers, couriers and licensed ferrymen, shall be exempted from statute labor, unless they are assessed for a sum over one thousand dollars, in which case they shall be liable in respect to their property for the excess over that sum, but shall not be liable to the poll tax, and firemen and enginemen certified as such by the clerk of the peace shall be absolutely exempt.

Property ex-
empt.

6. Property in the hands of executors, administrators, trustees, agents, guardians and women, over one thousand dollars of assessed value, shall be liable in respect to the excess at the same rate of taxation as other property.

Surveyor may
require teams.

7 The surveyor may require any person owning a horse or ox team or teams to send such team or teams properly yoked and harnessed, with a driver or drivers and a cart, to the extent of one-half the labor such person is required to perform, and every days labor of such team and driver shall count for two days.

Labor to be
done in eight
days if required

8. The surveyor may require the whole amount of statute labor imposed under this chapter to be performed within a period of eight days.

No. of hours in
each day.

9. A day when mentioned in this chapter shall be eight working hours.

10. The surveyors and commissioners shall cause to be summoned the persons contained in their lists to labor on the highways at the most seasonable time between the first day of April and the fifteenth day of September, except in the counties of Richmond, Inverness and Victoria, in which the statute labor shall be performed between the first day of May and the fifteenth day of October in every year, seed time and harvest excepted, by giving them six days notice of the time and place where they are to be employed, and of the tools to be brought for such labor, the notice to be given either by the surveyors or commissioners or by any person by them authorized and to be left verbally or in writing with some person of the age of discretion at the usual place of abode of the party; and at the time and place appointed, the surveyors or commissioners shall attend and oversee the persons so summoned to labor in making and repairing the highways and bridges in the most useful manner during the number of days required by this chapter.

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Time of performing labor.

Notice.

11. Every person liable to perform labor under this chapter who has been duly notified, but who may have left the district and shall be absent therefrom during the time appointed for the performance of his labor, and shall not have provided a sufficient substitute or paid the commutation therefor as hereinafter prescribed, or shall not adduce satisfactory proof of his having performed or commuted or otherwise paid for his statute labor in some other district, shall if he shall return to his usual place of abode within the year pay fifty cents for every day's labor to which he was liable.

Absentees.

12. In case a highway shall become obstructed or a bridge broken down or carried away or a road rendered impassable by any unforeseen cause, except by the falling or drifting of snow, the surveyors of highways or commissioners of streets, under the direction of two justices of the peace, shall notify such persons within the district as may be deemed necessary to attend immediately, either by themselves or with their teams, as may be considered advisable to remove the obstructions or make such repairs upon the highway or bridge as may by the justices be considered absolutely necessary to render the same passable; and every person so attending and labouring shall be allowed for the labor by a reduction of the like number of days from the labor to be by him performed under this chapter, either for that or for the subsequent year, as the same may occur before or after the time limited for the performance of highway labor in the district in the same manner and to the same extent as if the labor had been performed at the usual time; and every person duly notified to attend and labor under this section who shall neglect to do so shall be liable to the same forfeitures as if

Obstructions how removed.

CHAP. 62. he had neglected to attend and labor at the regular time, such forfeiture for each day when paid to reckon for one day's labor of such person under this chapter.

Commutation. 13. It shall be lawful for any person liable to perform labor hereunder to commute his labor on the payment to the overseer or commissioners on or before the day appointed for the performance of such labor, fifty cents for each day's labor which he is liable to perform; and the overseer or commissioners shall receive such commutation at any time within three days after the day appointed for the commencement of the labor, but the overseer or commissioners may in their discretion accept labor or the commutation within the period last named.

Forfeiture. 14. Every person duly notified who shall not labor agreeably to the notice or tender the commutation therefor as directed in the last section shall forfeit sixty cents for every day's labor to be by him performed.

Residents on islands. 15. No person residing upon an island whereon there are any highways upon which the performance of labor under this chapter may be enforced shall be obliged to work or furnish any labor hereunder upon the main land or be liable to any penalty for not so doing; but every person so residing upon an island and liable to perform labor under this chapter, shall perform the same upon some highway or bridge on the island; and where the island shall be connected with the main land by a causeway or bridge such portion of the labor as may be required to keep the causeway or bridge in repair or to rebuild the same shall be performed thereon.

Power of sessions for work on particular roads. 16. The general sessions may grant permission or direct in writing persons to perform the labor on such road as they shall direct.

Surveyor may alter road with consent of two justices. 17. The surveyor of any highway with the consent of two justices of the peace and the owner of the land through which such alteration is contemplated, may alter any road within the district of which he is surveyor and make a return of the same to the clerk of the peace, in order that the same may be recorded.

Breaking roads in winter. 18. The surveyors and commissioners shall as often as may be necessary during the winter order every person liable to do statute labor to work with their shovels, horses, oxen and sleds upon the highways, in order that the same may be rendered passable; and every person so liable not complying with the order shall for every omission forfeit seventy cents,—but no person shall be obliged to furnish more than two days labor of himself and team for any one fall of snow or work in any case when the fall or drift of snow shall not exceed twelve inches in depth.

Return of surveyors and commissioner. 19. Every surveyor and commissioner of streets shall annually on or before the first day of the sessions, which

shall happen next after the time herein limited for the performance of highway labor, make a true and faithful return in writing under his hand to the clerk of the peace of the labor performed by each, and shewing the commutations and fines by him received and the expenditure thereof and the amount of moneys then in his hands, which latter the surveyor or commissioners shall at the same time pay over to the clerk of the peace, to be expended upon the roads under the direction of the sessions. CHAP. 62.

20. When the owner of property liable to assessment for statute labor resides in another district the labor shall be performed or the commutation paid in the district where such person resides. When owner resides out of district from property.

21. The general or special sessions called for the purpose shall appoint a justice of the peace, or other suitable person in such electoral district with whom a copy of the assessment roll for that district shall be lodged, such copy to be furnished by the clerk of the peace who shall notify the surveyors of the persons with whom such roll is lodged, and shall require them to meet with such person at a time and place therein specified and make out the lists of all persons liable to perform statute labor within the limits of each surveyor and the number of days which each person shall be liable to perform; and the sessions shall make such regulations to secure the due notification of the surveyors as to them may seem proper, and two days labor shall be remitted to the person with whom the assessment roll is so lodged. Proceedings to make up roll.

22. All monies collected by surveyors of highways and commissioners of streets shall be expended by tender and contract or by public auction after three days notice in writing posted in at least two of the most public places in the district, unless in the opinion of the surveyor or commissioner it would be more advantageous to the public that such expenditure should be by day's work; and in cases of expenditure by day's work the surveyor or commissioner shall make oath to their accounts in the same form as in the expenditure of government road money. Expenditure of monies.

23. Each surveyor and commissioner who shall by neglect or misconduct cause the loss of any statute labor shall be liable to pay double the amount of such statute labor, to be recovered as debts of that amount are now recoverable, such amount to be proceeded for within two years, and when recovered to be applied as follows: one-half for the roads within the county or district, and one-half to the prosecutor. By day's work to be attested.

24. Every surveyor or commissioner for any other neglect of duty shall be liable to a penalty of eight dollars to be recovered and applied as in the last preceding section. Penalty on surveyor for neglect.

How recovered and applied.

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Pay of surveyors.

25. The surveyor of statute labor shall retain out of the monies in his hands the sum of one dollar for each and every day which he is obliged to attend on the road over and above the number of days which he is liable to perform under this chapter.

Forfeitures by minors how recovered.

26. All fines and forfeitures incurred by minors under this chapter may be recovered from the parents, masters or guardians of such minors with whom such minors reside or who have a right to receive their wages in the manner provided in the next section.

Forfeitures how recovered and applied.

27. Forfeitures under this chapter shall be sued for and recovered by the surveyor or commissioners by their name of office as surveyor of highways or commissioners of streets for the place for which they have been appointed, or in the individual names of them or any of them, or by and in the name of any person who will sue therefor, and in any case in the same manner and with the like costs as if they were private debts, and when recovered shall be applied by the surveyor or commissioners to the repair of the highways.

Form of returns

28. Returns of statute labor shall be made in the form in the schedule hereto annexed.

General inspectors.

29. The general sessions in each county or district may once in each year appoint one or more general inspectors of statute labor, whose salary and duties shall be fixed by such sessions.

Blank forms how furnished.

30. Blank forms of surveyor's returns of highway labor shall be furnished from the provincial secretary's office and forwarded to the clerks of the peace on application made for that purpose; and the clerks of the peace shall on or before the first day of January in each year make and return to the provincial secretary's office an abstract of the returns of such surveyors of highways.

Return of clerks of peace.

Clerk of peace to prosecute surveyors.

31. It shall be the duty of the clerk of the peace to prosecute delinquent surveyors for neglect or breach of duty under sections twenty-three and twenty-four of this chapter.

Pictou town exempt.

32. So much of the town of Pictou as is within the limits of the commissioners of streets shall be exempted from the operation of this chapter.

Counties exempt.

33. This chapter shall not go into operation in the counties of Lunenburg, Cape Breton, Inverness, Victoria, Cumberland, Digby, Queens, Richmond, Halifax, and Kings.

County of186

Return of Statute Labor forRoad District,

No. , named

Names of parties liable for statute labor.	No. of days for which liable.	Day's work performed.	Commutation		Fines collected.		Fines not collected.	
			Dols.	cts.	Dols.	cts.	Dols.	cts.

Account of expenditure of monies collected from commu-
tations, fines, &c., as per foregoing return.

Names of laborers.	Days men.	Days with team.	Rate per day.	Dols.	cts.	Contracts & materials.

N. B.—In case any portion of the labor is performed by
contract, the date, name of the contractor, and particulars
of the contract to be set forth in the right hand column.

CHAPTER 63.

OF COMMISSIONERS OF STREETS.

1. The jurisdiction of the commissioners shall be confi-
ned to the limits following, that is to say :

Jurisdiction of
commissioners
defined.

FOR MAITLAND.

From Richard Anthony's east line to the Five Mile River,
and along the Kennetcook road to Rocky Brook.

FOR WINDSOR.

To such parts of the town as extend from Smith's island

CHAP. 63. to the northward and eastward as far as the bridge over the Trecothick creek, on the main road leading out of the town of Windsor, as far as the church, and on the southward and westward to Falmouth ferry.

FOR BRIDGETOWN.

Within the bounds following, that is to say: beginning at the western boundary line of the late William Ruffee, one half a mile to the northward of the Granville main road as now situate, thence westwardly until it meets the eastern boundary line of the late Henry Troop, thence southwardly until it meets the Annapolis river, thence by the course of the river to the western line of William Ruffee, thence northwardly the course of that line to the bound first mentioned.

FOR ANNAPOLIS ROYAL.

To such parts of the town as extend eastwardly to the intersection of the main road to Halifax, by the old road leading to the Dalhousie settlement, southwardly to the General's bridge, westwardly to Allen's creek, and northwardly to Hog Island, including the same.

FOR DIGBY.

To all the roads and streets which are comprehended within a circuit of two miles extending from the court house in the town of Digby in every direction.

FOR LIVERPOOL.

To such parts thereof as extend from Fort Point by the western side of Liverpool harbor to the bridge crossing the main road leading to the falls near More's tan-yard, thence south-west one mile, thence south-east one mile, thence north-east until it strikes the harbor of Liverpool, and thence by the harbor to Fort Point.

FOR MILTON.

Beginning on the eastern side of Liverpool river at a bridge called Salmon Island bridge, thence running at right angles to the river eastwardly half a mile, thence northwardly parallel to the river until it comes opposite to Thomas Hetherington's house, thence running one mile and a quarter on a course about north forty-five degrees west, in the direction of and past the house of Joseph Ford, junr., including such house, thence southwardly parallel to the river until it comes opposite to the residence of Freeman Tupper inclusive, thence to the river, thence down the river to Salmon River bridge.

FOR PORT MEDWAY.

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From the Western Head to South West Cove, and extending back from the river one mile.

FOR TUSKET VILLAGE.

From the court house in Tusket, to extend one mile in every direction.

FOR LUNENBURG.

Within such parts of the town as extend eastward to the southwest angle of the garden lots nearest to the town, west to the road leading to Burn's tan-yard, and north to the bridge in the rear of the town.

FOR CHESTER.

To the town plot.

FOR DARTMOUTH.

Within the distance of one mile, measured in a southwardly, eastwardly and northwardly direction, from the public landing or steamboat company's wharf.

FOR PICTOU.

On the west by the west side of the Town Gut, on the east by the west side line of the farm lately occupied by the late David Lowden, on the south by the harbor of Pictou, and on the north to the rear line of the original lots laid out and fronting the harbor.

FOR NEW GLASGOW.

To such part as is comprehended within the bounds following, that is to say:—To be bounded on the south by a line running on the south line of the property of the widow of Alexander Fraser, deceased, and extending eastwardly and westwardly to the east and west lines and boundaries hereinafter mentioned; on the north by a line running on the north line of the property of John Rose, and extending eastwardly and westwardly as hereinbefore mentioned; on the east by a line running on the front line of Edward Graham's house, and extending northwardly and southwardly to the north and south lines hereinbefore mentioned, in a parallel course with the river; and on the west by the road leading from the Albion mines to the point.

FOR GUYSBOROUGH.

To the town plot.

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FOR SYDNEY.

To the peninsula of Sydney, extending to the southward and eastward to Fresh Water River Creek, the old Saint Peter's road, and thence in an eastwardly direction to Copitt's mill brook, and thence to be bounded by the brook until it meets the waters of Malony's Creek.

FOR TRURO.

To the village of Truro, in the county of Colchester, within the following limits; bounded north by the line between Truro and Onslow; west by a line at right angles thereto, passing by the presbyterian meeting house, so as to include the road from the presbyterian meeting house to the board landing; south by a line parallel with the first line, and to run one mile south of the court house, and east by a line parallel with the west line, and to run along the east line of the lane called David Fulton's lane, so as to include William Eaton's lane; the east boundary line to extend northwardly the corner of said lane to the Onslow town line.

FOR NEW CALEDONIA.

From Jacob Sturk's west line, west to William M. Weatherspoon's west line, bounded south by the Annapolis river, and running north half a mile from the main road.

Sections applicable to the city of Halifax.

2. The subsequent provisions of this chapter shall extend to the city of Halifax and the commissioners of streets therein, unless where specifically excepted.

Clerk and receiver appointed; subdivision of districts.

3. The commissioners shall appoint a clerk and receiver of monies, and subdivide their districts and assign a part to each commissioner.

Duties of commissioners.

4. The commissioners shall remove all incumbrances upon the streets, prevent encroachments thereon, make repairs, alterations and improvements therein as required; open and make new streets when authorized, make and repair bridges, and cause to be observed the laws touching the streets and bridges, or the work to be performed thereon; and especially shall call out, sue for, levy and receive from the inhabitants liable to perform highway labor the monies, services, highway work and penalties and composition therefor, due, payable or to be performed by them; and shall prosecute for offences committed against the laws relating to highways and sue persons holding monies appropriated to the repair of the streets, or not paying any penalty appropriated thereto.

Accounts of commissioner.

5. The commissioners shall keep an exact account of monies received by them and services performed under their direction; and shall under a penalty of twenty dollars

annually on or before the first day of the sessions which shall happen first after the time limited for the performance of statute labor, render under their hands to the clerk of the peace, to be laid before the sessions, a general, regular, and fair account in writing of all monies received and paid by them as commissioners for the past year, to the end that the same may be audited and passed by the sessions. This section not to extend to the city of Halifax.

6. The commissioners shall from time to time cause the streets within their divisions to be cleared, repaired, raised, sunk, altered or paved, as they may deem proper, and may also cause to be dug and carried out of or brought into the streets, materials from the shores of the harbors, doing as little injury as possible in any case to the proprietors of the soil, and may employ and pay boatmen, carts and laborers, as they may judge conducive to the accomplishing the designs of this chapter; and may also make contracts for the repairing and paving of the streets; and may compound with persons by the year for such sum in advance as they may deem reasonable for the proportion of highway labor or payments to which such persons may be liable; and may put up bars and fences to shut up streets while undergoing repairs; and may raise, sink, alter or new lay drains, water-courses, pipes and sewers, as they may think proper, causing as little detriment to individuals as the case will admit of; and may cause the course of gutters, water-courses or channels, running in or through the streets, to be altered as they shall think proper.

7. Persons residing within the foregoing limits respectively, shall keep the gutters and streets before the houses, buildings or land inhabited or occupied by them, free from dirt, filth and nuisance of every kind; and whenever any incumbrance or nuisance shall be found in any of the streets the person before or nearest whose house, building or land the same shall be, shall forfeit four dollars and also pay the expense of removing the same; and any commissioner may cause the removal thereof without giving notice to the owner, or being in any way answerable therefor; but no person shall be liable to this penalty unless he shall have placed the nuisance or incumbrance in the street where found, or not having so placed it shall suffer the same to continue twenty-four hours.

8. Persons by leave of the commissioners may place in the streets materials for building, not to include ships, and erect posts, bars or enclosures for securing such materials, and continue the same for such time as the commissioners may give leave and in manner as they shall direct, and not longer or otherwise on pain of forfeiture.

9. The commissioners may cause wells to be dug and pumps to be placed therein, in the streets where they shall judge necessary and convenient, in manner as they shall direct.

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Further duties of commissioners.

Fine for neglecting to keep gutters and streets in front of premises clean.

Persons building may occupy streets for placing materials.

Wells and pumps, how provided,

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Nuisances and encroachments liable to removal.

10. The commissioners shall cause all things belonging to any building or cellar or to any ground or enclosure thereof, which may occasion any nuisance, encroachment or annoyance in any street, to be removed or altered in manner approved by them or their surveyor; or if it can be done without particular inconvenience to the public, may suffer the same to remain upon the proprietor giving security that it shall not be repaired or rebuilt, and also paying to the commissioners a reasonable annual ground rent for the part of the street encroached on during the continuance of the encroachment.

Line of streets, how protected in case of new buildings.

11. Persons intending to build upon or close to the line of a street shall before digging a foundation or beginning the building apply to the commissioners to cause the line of the street to be defined and laid out, and shall defray the expense of a surveyor if necessary to employ one, and shall dig the foundation and erect the building within the line avoiding any encroachment; and if any person shall erect a building upon the line of the street without making such application and having the line so ascertained, he shall forfeit ten pounds and shall also remove the encroachment or otherwise the commissioners may remove the same or take the steps by law allowed in cases of common nuisances.

Lines settled by jury in case of dispute; return how confirmed.

12. When the commissioners shall have proceeded to ascertain the line of the street on the application of any person about to build thereon, and he shall be dissatisfied with the line pointed out by the commissioners, a judge of the supreme court shall upon application of either party issue a precept to the sheriff or his deputy, to summon a jury of twelve disinterested freeholders to meet at some convenient day therein mentioned to view and lay out the line; and the jury shall have an oath administered to them by the sheriff or his deputy, well and truly to lay out and establish the line of the street according to their best judgment, and the witnesses tendered shall be sworn by the sheriff or his deputy; and if the jurors or either party require it a new survey of the line shall be made, and the sheriff or his deputy shall make a return forthwith under the hands of himself and the jurors to the judge, who, if he shall approve thereof, shall confirm the return, and the same shall be filed in the office of the clerk of the peace; but if the judge shall not approve of the return a new precept shall be issued and further proceedings had thereon in manner prescribed as to the first precept and so on until a return be confirmed; and the judge shall direct how and by whom the expenses of the proceedings shall be paid, and the same shall be taxed by the judge and shall not exceed forty dollars.

Soil of streets to be broken only by permission in writing; fine for offences.

13. No person shall break up the soil of a street without first making application to the commissioners in

writing, specifying the purpose for which such breaking up is required, and obtaining their permission therefor in writing; and the commissioners may impose such terms upon the person applying as the security of passengers shall appear to them to require; and any person acting contrary to this section or to terms imposed by the commissioners shall for every offence forfeit twenty dollars. CHAP. 63.

14. Every person who shall drive any carriage or ride over a side path or roll or place heavy articles over or on the same to the injury or obstruction of the side path shall for every offence forfeit not less than one nor more than eight dollars. Fine for driving or riding on side path.

15. The whole of the bridge over the Annapolis river at Bridgetown shall continue under the charge of the commissioners there, whose duty it shall be to see to the proper keeping and repair thereof; and they shall take such measures for preventing injury to the bridge and for bringing to punishment persons guilty of wilfully injuring the same as to them may appear expedient. Annapolis river bridge under charge of commissioners.

16. The court of general sessions are hereby empowered to set off by limits, districts within their counties, and to declare what number of commissioners of streets shall be appointed for each district in manner following: the grand jury shall recommend double the number being residents in such districts, of whom the sessions shall select one-half, one of whom shall annually retire in the order in which his name stands on the recommendation list handed in by the grand jury, and upon such retirement two other residents shall be recommended in like manner, one of whom shall be selected by the sessions to supply the vacancy created by such retirement, and in case of the death, continued absence, or refusal to serve of any such commissioners, a special sessions may fill up such vacancy, subject to the confirmation of the grand jury and the general sessions at their next meeting; and any person appointed under this section who shall neglect his duty, or after notice of such appointment shall refuse or neglect to be sworn into office within fourteen days, shall forfeit and pay a fine of eight dollars. Sessions may set off districts.

17. The sessions in setting off districts may include within their limits any bridge now or hereafter to be built over any brook, stream or river, dividing any districts or townships, and may place such bridge or any part thereof under the charge of the commissioners having supervision within such districts. Appointment of commissioners.

18. Upon being sworn to the faithful discharge of their duty all the provisions of this chapter shall apply to the commissioners to be appointed under the seventeenth section. Vacancies, how filled.

19. Sections fifteen and seventeen shall not apply to the city of Halifax. Bridges over rivers, &c., dividing townships, &c.

Provisions of this chapter to apply to commissioners.

Not to apply to city of Halifax.

CHAP. 64.

Vacancies how filled up.

Powers of commissioners.

Money and fines, how recovered and applied.

Notice of action against commissioners; limitation.

Definition of terms.

20. When vacancies of commissioners shall occur in the several districts or villages in the first section named they shall be filled up and supplied under the seventeenth section.

21. The commissioners shall have all the powers by law vested in the surveyors of highways, and no surveyors of highways shall have any powers within their jurisdiction.

22. Monies and forfeitures payable under the foregoing sections may be sued for and recovered by the commissioners in their name of office as commissioners of streets for the place for which they have been appointed, or in the individual names of them or any of them in the same manner and with the like costs as if they were private debts, and when recovered shall be applied by the commissioners to the repair of the streets or other the purposes of this chapter.

23. No action shall be commenced against the commissioners or persons acting under them until twenty days notice in writing shall be given to one or more of the commissioners, nor after six months next after the act committed for which the action shall be brought, and every such action shall be laid and tried in the county within which the commissioners have jurisdiction.

24. The word "commissioners" when used in this chapter shall include the commissioners of streets or the major part of them within their respective jurisdictions, unless otherwise expressed or repugnant to the sense; and the word "streets" shall include highways, lanes and bridges.

CHAPTER 64.

OF THE EXPENDITURE OF MONIES ON THE ROADS.

Commissioners how appointed.

1. The governor in council shall annually before the fifteenth day of May, and thereafter in cases of necessity, appoint commissioners for superintending the expenditure of monies granted for the making and repairing of roads and bridges, and may remove them at pleasure and appoint others in their place; and the provincial secretary shall furnish the receiver general with a list of the names of the commissioners and the sums to be by them expended, and shall give the receiver general notice of alterations made in the commissions, and shall, within twenty days after the appointments, have the commissions and the bonds to be entered into by the commissioners, where required, transmitted ready for execution.

2. The commissioners, when the amount to be expended shall exceed eighty dollars, shall before entering upon the duties of office, give security by bond, with two sureties to the satisfaction of two justices of the peace for the county in double the amount of the sum to be by them expended, faithfully to lay out and account for the money according to law ; and the justices shall certify their approbation and the sufficiency of the sureties upon the back of the bond.

CHAP. 64.

Commissioners
bonds where
sums over
eighty dollars.

3. The receiver general shall retain in his hands, where the amount shall not exceed eighty dollars, the whole, and in other cases two-thirds of the amount to be expended, until the whole sum shall have been duly laid out.

Sums under
eighty dollars
not to be drawn
till expended;
over that am't
one-third only.

4. The monies shall be expended after sale by auction or by tender and contract, unless it shall appear to the commissioner that the same or parts thereof cannot be so advantageously expended in that manner as by day's work, in which case the monies or parts thereof required may be expended by day's work ; but the commissioner who shall expend any monies by day's work shall render an account thereof in writing under oath to the receiver general, the oath to be administered by a justice of the peace without fee, and to be as near as may be as follows :

Money how to
be expended ;
accounts, form
of oath, &c.

"I, A. B., do swear that the annexed [*or foregoing*] account is just and true, and that the monies by me expended have been fairly and honestly applied for the purposes for which they were granted ; that I procured the best labor in my power to procure, and at the lowest rate of wages, and that the day's work charged in the account has been, in my opinion, more advantageous to the public than if the expenditure of the sum had been made by public sale or by tender and contract.

(Signed) A. B., commissioner.

Sworn to at ———, this ——— day of ———, 18——, before me. (Signed) C. D., J. P.

5. Before entering into any contract the commissioner shall give notice thereof by advertisement posted up for ten days previously in the places usual for public notices in the county, and he shall receive sufficient security from the contractor for the performance of the contract within the time specified ; and he shall where the whole amount to be expended exceeds eighty dollars, pay the contractor as the work shall be proceeded in, monies on account, until one third of the amount of the contract shall have been paid ; but shall not pay the remaining two-thirds until the work shall be completed agreeably to contract. Contracts shall be made to expire on or before the last day of September in the year in which they are entered into, except those for the opening of new roads and the improving such as have not been used for wheel carriages, and for erecting bridges which may be extended until the thirty-first day of October, and the contracts shall be as near as may be

Contracts how
to be entered
into, and when
to be fulfilled.

CHAP. 64. in the words following, and shall be binding on the parties thereto :

Form.

“Articles of agreement made this — day of —, one thousand eight hundred and —, between A. B., commissioner of — of the one part, and C. D. of —, and E. F. and G. H. of —, as sureties of the said C. D. of the other part, as follows, viz. : the said C. D., E. F. and G. H. agree with the said A. B. that the said C. D. will on or before the — day of — next, in a good and workmanlike manner, well and sufficiently — to the satisfaction of the said A. B. ; and the said A. B. agrees with the said C. D. that he, the said A. B., will pay unto the said C. D., the sum of — in manner following, that is to say : one-third thereof from time to time as the work shall be proceeded in, and the remaining two-thirds when the work shall be completed according to this contract.”

Contracts in cases under eighty dollars.

6. Where the sum to be expended on any particular work shall not exceed eighty dollars, it shall not be imperative on the commissioner to require the contractor to enter into the formal contract hereinbefore prescribed, but it shall be sufficient to make a memorandum in writing, which shall be binding upon the contractor and his surety for the due performance of the contract, and upon the commissioner for the payment of the monies agreed on. And the memorandum shall be as near as may be in the words following :

Form.

A. B. of — hereby agrees with C. D. of — to perform the following work, viz. : — and to complete the same in a good and workmanlike manner, on or before the — day of — next. For the due performance whereof E. F. of — hereby becomes surety for the said A. B. And the said C. D. as commissioner for the performance of the work hereby agrees with the said A. B. on the due performance of his contract, to the satisfaction of the said C. D. to pay him the sum of — therefor.

Dated this — day of — 18—.

(Signed)

A. B.

C. D.

E. F.

Return of commissioner in cases of monies expended by contract.

7. Commissioners expending any monies by contract shall make return under oath to the provincial secretary's office, stating the amount of the different contracts entered into by them ; the oath to be administered by a justice of the peace without fee, and to be as near as may be as follows :

Oath.

“I, A. B., do swear that the contract referred to in the annexed [*or foregoing*] account, has been faithfully executed, and the money voted for the work has been laid out properly, and to my entire satisfaction.

(Signed)

A. B.

Sworn to at — this — day of —, 18—, before me.

(Signed)

C. D., J. P.”

And they shall also make return of the contracts or copies thereof when exceeding forty dollars. CHAP. 64.

8. If two justices of the peace for the county shall certify to the governor that the work upon any road or bridge hath not been faithfully performed, or that any contract hath not been faithfully executed, the commissioner shall not draw the money entrusted to him to expend, or the remaining two thirds thereof, as the case may be; but the general sessions for the county, or a special sessions to be called for the purpose, shall inquire into the expenditure of the money, the performance of the labor and the execution of the contract where one has been entered into, notwithstanding the same may have been performed to the satisfaction of the commissioner, and shall certify to the governor the particulars of the expenditure and the sum which in their judgment ought to be paid to the commissioner, which sum only the commissioner shall receive from the treasury.

Two justices may certify where work is not faithfully performed; proceedings thereupon.

9. Where it may be necessary or expedient to procure materials for the repair of the roads the commissioner, if from the absence or obstinacy of the owner or possessor of the soil, no agreement can be made with him, may enter with workmen, carts, carriages and horses, upon any lands, and therefrom for the repair of the road, dig up and carry away stones and gravel, and cut down and carry away trees, bushes, logs, poles and brush wood; and the damage done thereby shall be appraised by three indifferent freeholders, nominated by the nearest justice of the peace for the purpose; and the sum appraised shall be paid by the commissioners to the owner of the soil, if demanded, within three months after.

Materials how provided where the owner of the soil is absent or obstinate.

10. There shall not be employed in any one day more than forty laborers to work under one commissioner, and the wages of laborers shall be paid in cash only.

Number of laborers under one commissioner; wages, how paid.

11. For every ten laborers daily employed by one commissioner, the commissioner may employ a foreman who shall work with the laborers and take charge of those put under his direction, and shall work with and superintend the laborers generally in the absence of the commissioner.

Foreman may be appointed.

12. Commissioners shall be entitled to charge and retain after the rate of five per cent on the monies to be by them expended, and also ninety cents per day for every day they shall have been actually employed superintending day laborers, and shall have had at least ten laborers at work throughout the day. No foreman or laborer shall be paid more than ninety cents per day. No owner of a team, consisting of a cart, driver and two horses or four oxen, shall be paid more than two dollars per day; and of a team consisting of a cart, driver and one horse or two oxen, more than one dollar and fifty cents per day. No owner of a plough shall receive more

Commissioners per centage and pay; pay of men and teams; working hours.

CHAP. 65. than forty cents per day unless under special circumstances set forth in the affidavit to the account,—the day to consist of at least ten working hours; and the foregoing wages to be paid only where suitable day laborers, teams and drivers, cannot be had at lower rates for cash.

When employed on breakwaters, &c.

13. Laborers employed in erecting breakwaters and in clearing out rivers, or in other public works of a similar nature, shall be entitled to receive a sum not exceeding one dollar per day for their labor while so engaged.

Encroachments and incumbrances, how provided against.

14. The commissioners shall examine the breadths of the roads within the limits of their commission; and if it shall appear that any encroachment or incumbrance hath been made or placed upon the same, shall forthwith give notice to the owner or possessor of the land adjoining, that unless the road be opened and cleared to its proper width, within thirty days, the person who shall have caused or continued the encroachment or incumbrance will be prosecuted as the law directs; and the commissioners shall make an accurate return of the breadth of the roads and of incumbrances thereon to the supreme court or sessions for the county at its next sitting after their appointment, in order that such proceedings may be thereupon had by the court as may be deemed proper to carry into effect the laws in relation to encroachments and incumbrances on the highway.

Work to be completed 20th August.

15. Except in cases of emergency or in the opening of new roads the commissioners shall complete their work before the twentieth day of August in each year.

CHAPTER 65.

OF THE PRESERVATION OF ROADS.

Fine for alterations or encroachments.

1. If any person shall illegally alter or encroach on a public highway or private road laid out and established by law, he shall forfeit twenty dollars.

Justice, on his own view, or the oath of a witness, may fine for incumbering roads; fine how levied.

2. A justice of the peace on his own view or on the oath of a witness may impose a fine not exceeding four dollars on any person who shall encumber any road or bridge by placing anything thereon, to be levied by warrant of distress on the offender's goods, or in case the offender shall not be known by sale of the incumbrance, the overplus if any being retained for the owner when discovered. If the incumbrance shall be continued it shall be deemed a new offence.

Side paths preserved by order of sessions.

3. The sessions may make regulations for preserving the side paths of any public highway, except within the

city of Halifax, from being injured; and every person guilty of a breach of the regulations shall forfeit not less than one nor more than ten dollars. CHAP. 65.

4. If any person shall destroy or injure any trees or underwood growing upon the land lying between any river, lake or arm of the sea and any public highway running within thirty feet of the margin thereof, he shall forfeit a sum not exceeding eight dollars. Fine for destroying trees, &c., between rivers and highways.

5. If any person shall injure or destroy any trees or underwood growing at any place where the bank shall not be of greater width than twenty feet from the side line of the road to the waters of any river, sea or harbor, or shall from any place above high water mark where the bank shall not be of greater width than before mentioned, unless for agricultural purposes in a cultivated part thereof, carry away from the bank any earth or stones, or shall take from out of the bank where not of greater width than before mentioned any earth or stones near the roots of any trees or underwood, whereby the trees or underwood shall be injured or destroyed, he shall forfeit for every offence eight dollars, and in default of payment or goods whereon to levy he shall be committed to jail for not less than ten nor more than thirty days. Roads near sea, &c.,—banks not to be injured.

6. All incumbrances found on the ditches of the roads shall be forfeited and may be disposed of by the surveyor of highways without any legal proceedings, and the proceeds shall be applied by the surveyor to the repair of the road. Penalty.

7. No person shall ride or drive any horse at full speed or in a disorderly manner in the public street or highway in any town or village. Persons violating this provision shall forfeit a sum not exceeding four dollars for each offence, to be recovered as directed in the sixteenth section. Incumbrances forfeited.

8. No person shall trot or gallop any horse over a bridge within or partly within this province of greater length than twenty-five feet. Disorderly driving—penalty, &c.

9. Carriages on runners driven on the highway shall have affixed to the harness two good open bells or four good round bells, such as are commonly used in sleighs. Bridges protected.

10. Carriages on runners used for the conveyance of loads on the highway shall not be less than four feet wide from outside to outside. Carriages on runners to be driven with bells.

11. No load of hay or straw of greater width than fourteen feet shall be drawn on any highway. Width of carriages on runners.

12. No unloaded sled shall have pointed stakes standing or frames or projecting pieces outside. Width of loads of hay.

13. Persons in driving upon the highway shall leave the centre of the road on their right hand. Unloaded sleds not to have pointed stakes, &c.

14. Persons attempting when driving to pass another carriage on the highway leading in the same direction shall leave a sufficient way open on their left hand for the carriage which they are about to pass. Centre of highway to be left on the right.

Persons passing in carriages to leave sufficient space on the left.

CHAP. 66.

Carriages standing, not to be within eighteen inches of centre of road.

Fines for offences, when to be prosecuted.

How applied.

15. Carriages standing on the highway shall not be nearer the centre of the road than eighteen inches and on the proper side thereof.

16. Persons violating any of the provisions of the last eight sections shall for every offence forfeit two dollars, and in default of payment or goods whereon to levy shall be committed to jail for not more than forty-eight hours; but the prosecutions must be commenced within forty-eight hours after the offence.

17. Forfeitures under this chapter not specifically appropriated shall be applied under the directions of the sessions to the repair of roads and bridges.

CHAPTER 66.

OF SUPERVISORS OF PUBLIC GROUNDS.

Supervisors—how appointed.

1. The grand jury in each county or district shall on the application of twenty freeholders of any township appoint six persons resident in such township, out of whom the sessions shall appoint three to be supervisors of public grounds, and the sessions, upon the recommendation of the grand jury, may remove them or any of them, and vacancies shall be supplied by the grand jury recommending double the number of persons necessary to supply the same, out of whom the sessions shall appoint the number required, and the clerk of the peace shall keep a record of such appointments, removals and vacancies and the dates thereof; and such supervisors shall be a body corporate by the name of "the supervisors of public grounds for the township of _____."

Title of public grounds, &c., to be vested in supervisors.

2. The legal title of and in all public parade grounds and public landings within the township, and of all commons and other lands not belonging to the county or district at large, but which may be acquired or had for the general purposes and uses of the inhabitants of such township, and of and in all buildings thereon being and appurtenances thereto belonging, shall on their appointment vest in the supervisors for the original purposes for which they were intended.

Leases of, how made, accounts to be filed; rent how applied.

3. The supervisors may by direction of the grand jury and sessions lease any such lands not required for public uses for any period not exceeding seven years; and they shall annually render to the sessions an account of monies by them received for rents and of expenses connected with the letting, to be audited by the grand jury and sessions and then filed in the office of the clerk of the peace; and

the balance of such rents after deduction of the expenses shall be by the supervisors paid to the overseers of the poor for the township, or where there shall be more than one poor district in the township, then such balance shall be equally divided among the different districts and paid to the overseers thereof respectively. CHAP. 66.

4. Nothing in the preceding sections contained shall extend to any place of divine worship, burial ground, college, academy, school or any land thereto belonging, or any land belonging to any religious congregation or society, or shall deprive any person of any right lawfully acquired, or affect any lands or buildings now vested in trustees.

Lands and property excepted from the operation of this chapter.

5. Whenever the supervisors shall deem a road encroached upon or encumbered, and in all cases where a doubt or dispute shall exist as to the true line of a road or as to which side is encroached upon, the supervisors after ten days notice in writing to the parties in possession of the land on both sides of the road where the line is in dispute or the parties who may have caused the encroachment or incumbrance of the time and place at which they will investigate the matter, shall repair to the place where the encroachment or incumbrance shall be alleged to exist or the line be in dispute, and there inquire into the facts, and if necessary may then, or at a future day, have a survey made of the road, and examine witnesses on oath, to be administered by a supervisor touching the matter; and shall after completing the investigation determine and mark out the true line of the road and direct the same to be opened to the full width of sixty-six feet, or to any less width to which it may have been confined by its dedication, and shall by order in writing direct and cause all encroachments or incumbrances to be removed to such distance as they shall determine on, but they shall not cause to be removed any building erected upon the road; but where a building shall be found to encroach thereon they shall report the same to the next sessions, and the sessions shall make such order in relation thereto as may be deemed proper.

Encroachments upon roads, how dealt with: proceedings in cases of dispute

6. If any person shall not obey the order of the supervisor or sessions delivered to him in writing within thirty days after receiving the same, he shall forfeit four dollars; and if the incroachment or incumbrance be suffered to remain for a further space of twenty days after the imposition of the fine, the continuance shall be held a new offence, and shall subject the party to a further fine of four dollars; and so in like manner shall every further continuance of the encroachment for twenty days be held a new offence, and the further fine of four dollars be imposed therefor.

Fine for disobeying supervisor's or sessions' order.

7. The supervisors may apportion and order the payment of the expenses incident to the proceedings herein-

Expenses how borne and recovered.

CHAP. 66. before mentioned among and by such persons as shall appear advisable; and the same shall be recoverable by the parties entitled thereto as if it were a private debt of the like amount.

Order of supervisor, how proved.

8. In any suit under either of the two preceding sections, the production of a copy of the order of the supervisors under their hands, or of the order of sessions under the hand of the clerk of the peace, proof of the hand writing being in either case given, shall be good evidence of the order, and shall suffice to establish the claim of the plaintiff.

Record to be signed and filed

9. The supervisors shall make a record of their investigations and order, setting out therein the lines of road by them established, which record shall be signed by them and be returned to the clerk of the peace to be filed in his office.

Appeal from order.

10. Any person dissatisfied with the order of the supervisors or of the sessions may appeal therefrom to the next supreme court of the county, where the matters in dispute shall be tried and determined by the verdict of a jury, if a jury shall be ordered by the court; and pending the appeal, no further proceedings shall be had under the order.

Costs of appeal how paid if order confirmed.

11. If judgment on appeal shall confirm the order, then the cost of appeal shall be paid by the appellant, and having been taxed in the usual manner shall be recovered by execution.

When order reversed, costs how paid.

12. If the order shall be reversed on appeal, the costs consequent thereon, as well as the expenses attending the making of the order, shall be paid in the first instance by the supervisors, but shall form a county charge, and be refunded to them, together with their own reasonable charges.

Supervisors may make order for widening road.

13. Where a road shall have been opened and used as a public highway, and the same although not encroached upon, has been originally laid off too narrow, or shall have been made public by use only, and the supervisors shall deem it proper to widen the same, they shall notify the parties in possession of the lands on both sides of their intention to widen the road, and that application for that purpose will be made to the next sessions.

Proceedings to be had at sessions.

14. The supervisors shall at the next sessions submit to the court their application for widening the road, stating the then breadth thereof and the width to which they propose to open the same; and if they shall have made any agreement with the proprietors of the land as to compensation for land and fencing, shall at the same time submit it; and if the court are satisfied of the propriety of widening the road, and shall approve of the agreement so made, they shall make an order for widening the road, specifying the breadth to which it shall be extended, and

confirm the agreement made, which order shall be final, CHAP. 66. and the supervisors shall proceed to widen the road accordingly.

15. In case no agreement shall have been made, or the sessions shall not approve of the agreement, but shall be satisfied of the propriety of widening the road, they shall appoint three disinterested freeholders, one to be nominated by the supervisors, one to be nominated by the possessors of the lands, or on their omission by the sessions, and the third to be nominated by the sessions; and shall issue their precept to the three freeholders, directing them to lay off and mark out the road to the width directed, in the way most conducive to the public good and least prejudicial to the proprietors of the lands. And all further proceedings in reference to the widening of the road, whether upon appeal or otherwise, shall be had in the manner prescribed by the chapter of this series, in regard to opening new roads or altering old ones, except that the propriety of widening the road shall not be inquired into, and the damages appraised shall form a county charge; but no fencing shall be paid for except as directed under the last mentioned chapter.

Sessions may appoint three freeholders to lay off road; subsequent proceedings.

16. No road shall be opened under the last three sections to a greater extent than sixty-six feet.

Width of road.

17. Where any road in a township has been open for the use of the public for twenty years and any doubt or dispute has arisen as to the true line or width of such road, and the supervisors of public grounds in such township shall deem it proper to determine such true line or width, they shall be at liberty to proceed as in the case of widening roads under this chapter and subject to the like terms of compensation.

Disputes as to time or width of road, how settled.

18. Sections thirteen, fourteen, fifteen and sixteen of this chapter shall not apply to the city of Halifax.

Sections thirteen, fourteen, fifteen and sixteen not to apply to Halifax Roads affected by this chapter.

19. The provisions of this chapter shall extend to roads upon which grant of monies may have been made by the legislature, to roads which have been open for the use of the public for twenty years, and to roads upon which statute labor may have been performed, except private or pent roads whereon the statute labor may have been performed by direction of the sessions, but shall in no case apply to roads which have been abandoned.

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CHAPTER 67.

OF CLOSING ROADS.

Old roads may be closed by sessions on petition; proceedings prescribed.

1. Where a line of road has been altered and the old road has been abandoned by the public as a general thoroughfare, any of the proprietors of land adjoining the old road may by petition stating the facts and the names of all persons interested in the lands on either side of the road apply to the sessions to shut up or otherwise dispose of the same; which petition shall be accompanied by an affidavit that at least thirty days' previous notice in writing of the application has been given to the parties interested, and posted up in two public places near the road; and the sessions shall hear the parties applying, and their witnesses and also the parties notified, if they shall desire it, and their witnesses, and shall make an order either dismissing the application or granting or modifying the same. Persons dissatisfied with the order may appeal therefrom within ten days to the next sitting of the supreme court, and the clerk of the peace shall thereupon return the proceedings to the supreme court, who shall examine them, and if deemed advisable hear the parties appearing and their witnesses, and shall make order as shall seem right therein. The order of the sessions if not appealed from, and the order of the supreme court in case of appeal, to be conclusive.

Parties who may be heard; appeal allowed.

2. Persons although not interested in lands adjoining or near the road and their witnesses may be heard against the closing or disposing thereof, and may appeal from the order of sessions.

Where owner of adjoining lands is dead, who to be considered the proprietor.

3. If any land adjoining the road shall have been the property of a person deceased and be not divided among his heirs, the representatives of the deceased person and the guardian of his minor children, if any, and the person in possession of the land, shall for the purposes of this chapter be considered the proprietors.

CHAPTER 68.

OF BRIDGES AND PUBLIC LANDINGS.

Sessions to control public wharves.

1. The sessions shall have control of all public wharves and public landings, and of all draw bridges, and also of the following other bridges, viz.: Lake Porter bridge in the county of Halifax, the bridge of Sissiboo River, in the

county of Digby and Bear River, dividing the counties of Annapolis and Digby, which latter bridge, for the purposes of this chapter, shall be considered wholly in the county of Digby; and the sessions may make orders for the preservation and proper keeping thereof, and may appoint persons to superintend the same, who shall in such case be sworn to the faithful discharge of their duties before a justice of the peace, and the sessions may affix penalties for the breach of any such orders not exceeding in any one case twelve dollars, and may also impose charges on vessels lying at, and goods landed on, such wharves or landings, and may direct the mode of recovery and application of such penalties and charges; but nothing herein contained shall affect rights conferred by any act of incorporation in relation to any such draw bridge, public wharf or public landing.

2. The sessions, upon the presentment of the grand jury, are authorized to cause draws to be made in any of the bridges erected or to be erected over any of the rivers in this province; and all such bridges so converted into draw bridges, shall be thereafter subject to all the provisions of this chapter; but nothing herein contained shall authorize the placing a draw in any bridge built under any charter or act of incorporation.

Draws to be made in bridges upon presentment of grand jury.

CHAPTER 69.

OF FERRIES.

1. The sessions may establish ferries over harbors, bays, rivers and creeks within their counties or districts, and agree with and grant licenses to ferrymen on one or both sides thereof, under the regulations and at the rates of ferriage by the sessions established or to be established.

Ferries and ferriages to be established and regulated by sessions.

2. Ferrymen shall keep safe and good boats or vessels in good repair and suitable for the ferry, and give ready attendance on the passengers according to the regulations.

Duty of ferrymen.

3. Ferrymen not complying with the regulations or receiving more than the established rate of ferriage, or neglecting to keep boats or vessels or to give attendance as hereinbefore directed, shall forfeit for every offence not less than two dollars nor more than eight dollars; and shall be further liable to an action on the case for damage by any person sustained from the neglect.

Fine for neglect of duty; further liability.

5. When a ferry has been established and the ferryman licensed, if any other person shall carry over the harbor, bay, river or creek, whereon the ferry is established, any

Fine for interfering with ferryman's privileges.

CHAP. 70. person, cattle or carriage for hire, unless by consent of the licensed ferryman, or on his not giving due attendance, he shall for every offence forfeit not less than one dollar nor more than four dollars to the use of the person suing; and in default of goods whereon to levy, the person convicted shall be committed to jail for not less than five nor more than ten days, to be in the execution expressed, unless the amount shall be sooner paid; but if the licensed ferryman shall not give attendance pursuant to the regulations, then any other person may supply his place and receive pay as if licensed until another shall be appointed.

TITLE XIX.

OF RAILROADS.

CHAPTER 70.

1865, Cap. 12 also Cap. 14. of acts of 1865,
OF PROVINCIAL GOVERNMENT RAILROADS.

also Amended in 1868 Cap. 3.
Part the First.

Preamble.

Whereas, by chapter one of the acts of eighteen hundred and fifty four it was declared that the construction and maintenance of a trunk line of railway from the harbor of Halifax to the frontier of New Brunswick, with branch lines extending to the harbor of Pictou and to Victoria beach, will greatly facilitate the internal trade of Nova Scotia, will develop her resources, enlarge her revenue, and open more frequent and easy communication with the neighboring provinces and states.

Railways to be public works.

1. The lines of railway heretofore constructed and hereafter to be constructed under the provisions of this chapter shall be public provincial works, and shall be made on such grades and in such places as the governor in council shall determine and appoint as best adapted to promote the general interests.

Grades where to be made.

Trunk line to be completed first.

2. The line to be first completed shall be that which beginning at the harbor of Halifax and extending therefrom in a northerly direction will form a common trunk for all the lines to be hereafter made under the provisions of this chapter.

Other lines.

3. After the common trunk shall have been so completed the railways shall be carried on in such direction as shall be approved of by both houses of the legislature, and shall be designated by an act of this province or by resolutions entered on their journals.

*Cap. 13. of acts of 1865. Provides for construction of
Annapolis, & Pictou & Moncton Railway -*

4. The construction and management of railways in this province shall be under the charge of one or more commissioners, not exceeding three, appointed or to be appointed by the governor in council, who shall hold office during pleasure; but not more than one of such commissioners shall at any time hold a seat in one branch of the legislature—provided that this chapter shall not be construed to authorize the further extension of railways unless by concurrence of the legislature expressed by act or joint resolution.

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Construction,
management,
commissioners.

5. The commissioners shall build such railways by tender and contract after the plans and specifications therefor shall have been duly advertised, and they shall accept the tenders of such contractors as shall appear to them to be possessed of sufficient skill, experience and resources to carry on the work or such portions thereof as they may be willing to contract for; but where the commissioners in any case deem it for the public interest not to accept the lowest tender that may be made, it shall not be competent for them to accept a higher tender without the approval of the governor in council; and where any tender is higher than in the judgment of the commissioners or of the governor in council it is prudent to act on, the same shall not be accepted; and in such case the work shall be suspended for a time and new tenders advertised for, when the legislature or the governor in council shall deem it expedient to proceed.

Lines to be
built by tender
and contract.

6. The contracts to be so entered into shall be guarded by such securities and contain such provisions for retaining a proportion of the contract monies, to be held as a reserve fund for such periods of time, and on such conditions as may appear to be necessary for the protection of the public and securing a due performance of the contracts.

Contracts, secu-
rities for per-
formance of.

7. The governor in council may appoint a chief engineer to hold office during pleasure, who, under the instructions he may receive from the commissioners, shall have the general superintendence of the works to be constructed under this chapter, and whose duty it shall be to measure the work done, and for which payment shall be claimed,—to report upon the lines to be selected—the permanence of the works to be designed or executed—the strength of the rails—the sufficiency of plant and rolling stock,—and the faithful fulfilment of the contracts which may be entered into.

Chief engineer,
appointment
and duties of.

8. No money shall be paid to any contractor until the chief engineer shall have certified that the work for or on account of which the same shall be claimed has been duly and faithfully executed, nor until such certificate shall have been approved of by the commissioners—provided always that such certificate shall only be required with respect to the extension of the works beyond their present limits,

Payments to
contractors.

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Contractors and officers not to be members of the legislature.

No government officer or member to be security for railway contracts.

Lands required for lines and termini.

Powers of commissioners to deposit soil.

Commissioners &c. must notify possessors of the land &c.

Construction of roads, bridges, &c., over lands &c.

Alteration of courses of streams &c.

9. No member of the legislature shall hold or be appointed to any office of emolument under the commissioners or be a contractor or party to any contract arising out of the construction, management or working of the road or any part thereof.

10. No person holding a place in the provincial government or a seat in the legislature shall hereafter become security or be answerable for the performance of any contract with the railway commissioners or of any work or engagement in relation to the railway.

11. The commissioners or contractors are authorized to enter upon and take possession of any lands required for the track of the railways or for stations, and they shall lay off the same by metes and bounds and record a description and plan thereof in the registry of deeds for the county in which the lands are situate, and the same shall operate as a dedication to the public of such lands; the lands so taken shall not be less than four rods nor more than six rods in breadth for the track, exclusive of slopes of excavations and of embankments, except where it may be deemed advisable to alter the line or level of any public or private carriage road or divert any stream or river, in which case it shall be competent for the commissioners to take such further quantity as may be found necessary for such purposes; also, at each station a sufficient extent for depot and other station purposes; provided always that, excepting at the termini or junction of the railways, the quantity so appropriated shall not exceed five acres.

12. The commissioners or contractors may enter with workmen, carts, carriages and horses, upon any lands, and deposit thereon soil, earth, gravel, trees, bushes, logs, poles, brushwood or other material found on the line of railway or works connected therewith or for the purpose of digging up, quarrying and carrying away earth, stones, gravel, or other material, and cutting down and carrying away trees, bushes, logs, poles and brushwood therefrom for the making and repairing of such railway. Before entering for the purposes mentioned in this section the commissioners or contractors or the other persons acting under them or either of them shall notify the proprietors or possessors of the lands, and shall carry out such purposes with as little injury as possible consistently with those objects.

13. It shall be lawful for the commissioners to make or construct in, upon, across, under or over any land, streets, hills, vallies, roads, railroads or tramroads, canals, rivers, brooks, streams, lakes or other waters, such temporary or permanent inclined planes, embankments, cuttings, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches or other works as they may think proper.

14. They may alter the course of any river, canal, brook,

*This Section
Amended
in 1868.
Cap 3.*

stream or water course, and may divert or alter as well temporarily as permanently the course of any such rivers, streams of water, roads, streets or ways, or raise or sink the level of the same in order to carry them over or under, on the level of, or by the side of, the railway, as they may think proper. CHAP. 70.

15. They shall have power to make conduits or drains into, through or under any lands adjoining the railway, for the purpose of conveying water from or to the railway. Drains &c. conveying water to or from railways.

16. In all cases under the twelfth section for entries upon lands and materials taken whether before or after the passing of this chapter, the recompense for the injury to the land, the value of the earth, stones and gravel, and the trees, timber, brush and other materials dug, cut down or taken away for railway purposes, and for other damages to the proprietors or possessors, shall be referred to the determination of three arbitrators, one to be chosen by the proprietor or possessor, one by the commissioners or contractors or persons acting under them or either of them, and the third on the part of the county by some justice of the peace residing as near the premises as can conveniently be obtained to act and not interested in any question of damages; and in case of the absence or neglect after due notice of either party the arbitrators on that part shall be named by some justice of the peace disinterested as aforesaid residing as near the premises as conveniently can be obtained. Two of the said arbitrators may make an award, and the award shall be in writing, signed by the arbitrators making it. The arbitrators shall be entitled to a fee of one dollar, which shall be added to the damages and paid in the first instance by the commissioners, contractors, or persons acting under them. Value of materials, how ascertained.

17. The damages awarded shall be paid within one month with interest thereafter by the commissioners or contractors or other party acting under them as aforesaid as the case may be; either party including the arbitrator appointed on behalf of the county, or any justice of the peace on behalf of the county, may appeal to the supreme court according to the provisions of section fifty-two. Appraisal of arbitrators.

18. If appeal shall not be asserted in twenty days after the award the sum awarded may be sued for and recovered as debts of like amount are now by law recoverable. Damages &c., how paid.

19. The damages paid under the three last sections shall be chargeable on the county where the property lies and shall be assessed, levied, collected and paid to the commissioners or contractors pursuant to the provisions of this chapter. Appeal

20. Any party in whose favor an award shall have been made or shall hereafter be made under provisions of this chapter in respect of damages for materials taken for railway purposes, may elect to consider such award as an award against the county. Damages, how recovered.

Damages chargeable on county.

Party may consider award as against county.

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When award
filed to be coun-
ty charge.

Persons other
than contrac-
tors &c. must
furnish owners
with written au-
thority.

Who may be
held liable.

Fruit or orna-
mental trees
excepted.

Monies paid for
land to form
county charge;
how assessed.

Working of
lines.

Inspection of
contracts and
proceedings of
commissioners.

Salaries of offi-
cers.

Monies, how
drawn.

Accounts of
commissioners
—audit of.

21. Upon such award being filed with the county treasurer with such election endorsed in writing thereon, and signed by the party in whose favor the same shall have been made, the same shall become a county charge in the same manner as if it had been first paid by the contractor under the provisions of this chapter.

22. Before any party other than the commissioners and contractors immediately under them shall be at liberty to enter upon private lands under the twelfth section, they shall be obliged to furnish the owner or possessor thereof or leave at his residence, a written authority from such commissioners or contractors authorizing such entry; and thenceforth the owner shall at his option be entitled to consider any act to be done, and any liability to be incurred by the party so authorized as the act of the party himself or of the person or persons whose authority is so given.

23. Nothing contained in this chapter shall authorize the commissioners or contractors to cut down and carry away any fruit trees or trees planted or preserved for ornament.

24. The monies payable for such lands and fencing shall form a county charge, but in the apportionment of the assessment the sessions shall have respect to the relative benefits derived from the railway by the several sections of the county, and shall apportion the assessment accordingly.

25. Whenever the railways or any portions of them shall be completed, it shall be lawful for the governor in council to make such arrangements as may be suitable for working the railways as one line by a common management, or for working the trunk line and branches by separate commissioners; such arrangements to be submitted to both branches of the legislature at the session then next ensuing.

26. The governor in council shall have power to inspect all contracts and proceedings of the commissioners, to examine their accounts at all times, and to suspend the progress of the work until the next session of the legislature.

27. The governor in council shall in the first instance fix the rate of salary or compensation for the chairman and the other commissioners and the chief engineer, and shall approve of all other salaries to be awarded by the commissioners, subject in all cases to the revision and confirmation of the legislature at its first session thereafter.

28. The commissioners shall draw on the receiver general in such form as may be directed by the governor in council for all monies that may be required for the purposes of this chapter.

29. The commissioners shall furnish quarterly accounts of all such expenditures and liabilities, which shall be

examined and checked by the financial secretary, and presented to the general assembly in every year within the first ten days of each session, to be examined and audited by a joint committee of the legislative council and house of assembly, in the same manner as other public accounts.

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30. The commissioners are authorized to make regulations from time to time for the safe construction and working of the railways under their charge, for the transmission of goods and passengers thereon, for their care and management, and that of the plant and equipment used thereon, for the protection of wharves, bridges, culverts, crossings, stations, buildings and depots erected or to be erected, and all other the property in the possession and under the control of the board in their public capacity, and in such regulations to affix fines, penalties and punishments for the breach thereof—provided always that such regulations before going into operation shall be first sanctioned by the governor in council.

Board to make regulations regarding construction, &c.

31. The governor in council shall have power by order for that purpose made to except from drill, training or other militia service, all persons engaged in the actual construction of railways in the province.

Proviso.

Governor may exempt persons working on railway from militia duty.

32. The governor by and with the advice of the executive council may contract a loan on the pledge of the revenues of this province, whether arising from the duties upon imports, the sale of crown lands, the royalty paid by miners, or the tolls to be collected on the railways constructed with the monies to be borrowed under this chapter.

Loan authorized.

33. Certificates of debt to be called debentures, bearing interest at six per cent, or at a less rate, as the governor in council may see fit, may be issued from time to time at par, or at such premium as the same may command as the railways proceed; and the governor in council shall determine at what periods of time, in what amounts, and on what conditions such certificates shall be issued.

Debentures: issue of, authorized.

34. The debentures shall be in the form to be hereafter directed by the governor in council, with coupons annexed thereto; they shall be signed by the governor and verified by his seal of office, and also countersigned by the receiver general; they shall be numbered consecutively, commencing with number one, and shall be issued in such sums, not less than one hundred pounds sterling, as may be deemed expedient; the interest thereon shall be paid half yearly at such place as shall be mentioned therein, and the principal of such debentures shall be paid in full at the expiration of twenty years from the date of their respective issues to the then holders thereof.

Form of debentures, mode of issuing, amount of, interest, &c.

35. The whole of the revenues to arise from the receipt of tolls on such railways shall after the expenses of working and maintenance have been paid, be applied towards

Proceeds of lines—how to be applied.

CHAP. 70. the payment of interest on the debentures, and the surplus shall form a surplus fund for the redemption of the loan.

Pledge for redemption of debentures.

36. Subject to the payment of any previously existing provincial liability and of the civil list, the faith and credit of the province, and the ordinary revenues thereof, and the amount of proceeds of any special impost which may hereafter be levied and collected for the purpose of paying off all such railway debentures, and the interest thereon, shall be and hereby are declared pledged to any and every holder of the same.

Monies raised to be paid to receiver general; application of.

37. The principal sums to be raised and borrowed shall be received from time to time as the same may be raised by the receiver general, who shall upon the warrants of the governor, pay out of the same such sums as may from time to time be required for defraying the charges made payable out of the same by this chapter, and who shall also upon the warrants of the governor pay the dividends and interest upon the sums so raised and borrowed as the same shall become due; and such fund shall be paid and managed in such manner for the redemption and liquidation of the principal sums as the governor in council shall from time to time direct and appoint, subject however to the provisions of this chapter. And it is hereby declared that the parliament of this province will confirm and carry out by such legislative enactments, if any, as may be necessary to give full effect to the same, any arrangement or agreement not inconsistent with the spirit of this chapter, which may be made or authorized by the governor in council with regard to the raising and borrowing of the sums aforesaid.

Management of fund.

Receiver general's account—audit of, &c.

38. The receiver general shall quarterly transmit to the governor for the purpose of being audited by the financial secretary and laid before the two houses of the legislature, a correct and detailed statement and account of the sums raised under the authority of this chapter, and of the debentures and other securities which shall have been issued, and of the interest and dividends paid thereon, and of the redemption of the whole or any part of the principal sum, and of the expenses attending the negotiation, management, payment, and redemption of the loan.

City of Halifax to take a tenth of stock; limited to \$400,000.

39. The city of Halifax shall be considered as holding stock in such railway to the extent of one-tenth part of the actual expenditures thereon,—such tenth part not to exceed in the whole the sum of four hundred thousand dollars—and shall be entitled to participate in the profits of the railways in proportion to the amount of such stock; and shall be assessed annually for the amount of interest thereon, at the same rate of interest at which the loan is obtained, and also for a proportionate amount of such sums as may be chargeable against the general revenues of this province for the redemption of the loan; such

annual sums to be assessed and levied as the legislature may hereafter direct, and to be paid into the hands of the receiver general, to form a part of the general revenues of this province, and to continue to be so annually assessed, levied and paid in until the loan under this chapter shall become extinguished under the provisions thereof.

CHAP. 70.

Assessment.

40. In case a less sum than eight hundred thousand dollars be borrowed in any one year the deficiency may be added to the sum to be borrowed in the next or any succeeding year; provided that the sums to be borrowed shall not exceed the rate of eight hundred thousand dollars per annum.

Deficiency of
sum borrowed
in one year ad-
ded to next.

41. Such debentures may be made payable in currency or sterling monies, and in such sums as from time to time may be deemed most expedient by the governor in council.

How payable

42. All the provisions of this chapter, except in so far as they are altered or modified by the two last sections, shall extend to such debentures.

Provisions to
extend to de-
bentures.

43. The debentures that have heretofore been or may hereafter be issued under the thirty-fourth section shall be and are hereby declared to be valid and binding, although the same have not heretofore been and may not hereafter be verified by the governor's seal of office as therein required.

Debentures
valid without
the governor's
seal.

44. On the first Tuesday of June in every year or at such other time and times as shall be fixed by a judge of the supreme court between the hours of ten o'clock in the forenoon and twelve o'clock at noon, the prothonotary of every county in which a railway is being constructed shall in his office, in the presence of the clerk of the peace, who is hereby required to be present, and in the presence of any other persons who may desire to attend, draw from the grand jury box the names of twenty-eight persons then resident within the county liable and able to serve as grand jurors for the then current year in the same manner as special jurors are now drawn—a notice of such time to be posted up by the clerk of the peace in at least three of the most public places near where such railroad damages have been sustained at least ten days before the drawing of such jury.

Jury—how
drawn.

45. The clerk of the peace on the one side and the claimants for damages on the other shall reduce such list to fourteen by each striking off a name alternately as special jurors are struck.

Striking of
jury.

46. Where the same person shall fill the office of prothonotary and clerk of the peace, and no person shall have been appointed for the purpose by a general or special sessions who are hereby authorized to make such appointment, the custos shall attend and act on behalf of the county instead of the clerk of the peace; and in the absence of the custos or in case the clerk of the peace

Where same
person holds the
offices of pro-
thonotary and
clerk of peace

CHAP. 70. and custos or either of them be claimants for damages, and no person be appointed by the sessions as before mentioned, or if the person appointed do not attend, then any disinterested magistrate may act for the county.

Lists to be furnished by railway commissioners.

47. The board of railway commissioners shall previously to the striking of the jury furnish the prothonotary with a list of the names of the several claimants for damages through whose lands the railway passes, according to the engineer's return to the board, together with the quantities of land in each case dedicated to the public, and also with a list of the names of those who shall have sustained damages by reason of the railway having deprived them of access to their property, whether on land or water, or having destroyed or impaired any use, easement or privilege which they had enjoyed in relation thereto: and such commissioners shall also furnish the prothonotary with plans distinctly exhibiting the premises of the claimants, with the line of the railway as it affects the same respectively. If the parties present who are interested as claimants agree upon any person to strike for them, the prothonotary shall minute the fact in writing, and such person shall act in that behalf: if the claimants cannot agree upon any person, or if no claimants attend, or if no one attend to strike on behalf of the county, the prothonotary shall strike for the absent party in the same way as special jurors are struck. If no qualified person appear to strike on either side, the first fourteen names drawn shall be the jury to be summoned.

Regulations regarding the striking of the jury.

Venire.

48. The prothonotary shall thereupon forthwith issue and deliver to the sheriff a venire as in schedule A, directing the sheriff to summon such jury to appear at a time and place to be therein named not more than sixteen days distant. And the sheriff shall duly warn such jurors, and both he and the prothonotary shall attend on the return day of such venire.

Proceedings of jury, duties, &c.

49. The first seven jurors who shall answer upon being drawn and called as petit jurors are drawn and called, shall be sworn by the prothonotary according to the form of oath in schedule B; and a panel of their names shall be prepared by the prothonotary, and by him attached to the venire, and he shall hand such venire to the sheriff who shall with such jury proceed to the execution of their duty forthwith, or on a day to be then named, and whereof the jury shall be duly notified; and if the number of such jurors at any time be reduced by death, inability from illness, or other cause, or through neglect or refusal, the remaining jurors shall proceed as if no such reduction had taken place, provided the whole number be not reduced below five. The jury shall examine the premises in each case, and shall value the land taken and dedicated for the railway, and shall estimate the damages to the property,

and investigate each separate claim for damages according to the circumstances, and form their judgment of such damages, as well prospective as present, including loss for delay of payment; and also shall consider the relative benefit as well as injury done to the property by the construction of the railway; and the jury or in case of disagreement after four hours deliberation, a majority whether of the full or reduced jury shall make an appraisement in writing, signed by such jurors, setting forth the amount of damages awarded to each claimant, and particularizing the nature and grounds of such damage, and the property or right in respect of which they accrued; and the sheriff shall within thirty days next after the swearing in of the jury file the venire and panel with the appraisement and his return with the clerk of the peace. If the jurors be reduced below five before the appraisements are completed, the appraisements duly made previously thereto shall be returned to the clerk of the peace, and the sheriff shall forthwith summon so many of the jurors drawn and struck, but not at first sworn, as shall be required to fill up such jury to the requisite number; and such replenished jury, or a majority of them, or in case of their reduction to a number not less than five by the causes hereinbefore mentioned, a majority of such reduced jury shall proceed to make the remaining appraisements; and the sheriff shall have power to adjourn or re-summon the jury from time to time, as occasion may require.

Disagreement,

Returns of
sheriff.Proceedings if
jury reduced
below five.

50. For the purpose of securing a fair and impartial appraisement, the sheriff and jury shall have free access to all public offices, and to the papers, plans and returns therein; and the railway commissioners, engineers and officers, if required by either party, and any other persons if subpoenaed, shall attend and give evidence as witnesses, under oath, if required by any party interested, and shall also produce all plans, papers and documents under their control touching the matters at issue.

Jury to have
access to pa-
pers, plans, &c

51. The prothonotary and clerk of the peace, or person acting for the county, shall be entitled to a fee of four dollars each for their services; the sheriff shall be entitled to four dollars per day; and the jurors sworn shall be entitled each to the sum of three dollars for every day's actual attendance, in full payment for their services; the jurors not sworn, but who were summoned and attended, shall be entitled to one dollar for such attendance, and to travelling fees as now allowed to petit jurors; and the sheriff shall be entitled to a further sum of four dollars for warning such jury; which fees shall be assessed, levied and collected, and paid as ordinary county charges. Every person summoned as a juror and making default in the performance of any of the duties required of him shall forfeit the sum of eighty dollars for each default, to be

Fees.

Forfeit for de-
fault of jury.

CHAP. 70. immediately levied under a warrant from the prothonotary, directed to the sheriff.

Appeal to supreme court—proceedings in.

52. Within thirty days after the return of any appraisement, the custos or clerk of the peace, on behalf of the county, or any party interested who may deem himself aggrieved, may apply by affidavit to the supreme court, or a judge thereof, for a summons and order to set the proceedings aside in whole or in part, or to alter the valuation, which summons shall be served upon the opposite party in the manner specified therein; but such proceedings shall not be set aside upon any mere technical objection; and the court or a judge shall have power upon satisfactory proof adduced by affidavit or viva voce examination of the parties and those interested, to confirm, increase or reduce the damages, or otherwise rectify the finding of the jury in substance or form; or if such court or judge shall see fit a jury shall be empanelled to try the disputed matters of fact with reference to such damages; and in case the damages complained of shall either be reduced in case of proceedings by the county or increased in case of proceedings by a claimant to the extent of one-sixth, costs shall be recovered by the county or party applying, but not otherwise; and the county shall pay the cost of such proceedings if the damages be not so reduced, to be added to the damages; and the party shall pay the cost of such proceedings if the damages be not so increased, to be deducted from the amount of his claim for damages; the court or judge shall make a final order touching the damages and costs, of which a certified copy shall forthwith be transmitted by the prothonotary to the clerk of the peace, and by which the court of sessions shall be governed in the amount of damages and costs to be assessed and collected.

Jury under this section.

Trial.

Railway damages under appraisements to be assessed, collected and paid.

The jury contemplated under this section is and shall be the ordinary petit jury of the supreme court or a special jury when specially ordered; and the trials shall take place before the court or at sittings in the ordinary manner of trials. Damages under appraisements against which no appeal has been asserted, or which have been determined after appeal, shall be assessed, collected, levied, raised and paid as soon as possible, and without any needless delay on any pretence whatever.

Payment of amount appraised.

53. The amount appraised upon each county shall be payable in two years by equal annual instalments, the first instalment to be paid in one year after such appraisement with interest at six per cent per annum for any delay after that period, and the other instalment to be paid in the ensuing year with like interest for delay of payment.

Certificate of appraisement.

54. After the expiration of the notice the custos of the county shall deliver to each party in the form in schedule C, a certificate showing the amount to which such party is entitled under such appraisement; and such certificate

shall be signed by the custos and countersigned by the clerk of the peace, and shall be payable to order, and be transferable by endorsement, and shall authorize the party entitled to receive the amount of such appraisement together with interest for any delay of payment after the instalment becomes due when the same becomes payable, and which shall be a charge upon the county for all the monies payable thereunder until fully discharged.

55. The damages appraised and established under this chapter, and costs where costs shall be payable, shall be apportioned by the sessions without any delay amongst the townships, districts and places in each county and district, in proportion to the relative benefits which in the opinion of the court are likely to be derived by the several sections from the railway; and the proportion of each township, district and place shall be assessed upon their inhabitants, and shall be levied, collected and paid over upon the same principle as county rates are or shall be by law levied, collected and paid over, provided that every tenant of real estate for any term less than freehold who shall pay rate under this chapter shall be entitled to deduct from the rent payable by him to his landlord, or otherwise to recover from the owner of the estate so much of the rate paid by him as was imposed upon him in respect of such real estate.

Damages—how apportioned and collected.

56. If the sessions shall neglect or delay to make any such apportionment, or to cause any of the monies to be assessed, collected and paid over, which according to this chapter they ought to cause to be assessed, collected and paid over, it shall be lawful for the supreme court or a judge, upon application by any party interested, forthwith to amerce the county for the amounts for which the sessions ought to have made apportionment as aforesaid, together with the costs of proceeding before the supreme court or a judge; such amercement to be apportioned and assessed by the court or a judge upon the township, district and place in each county on the principle pointed out in the preceding section, and the court or judge may receive evidence thereon by affidavit or otherwise, and the sums amerced shall be levied, collected and paid over in a manner analogous to that in which county rates are levied, collected and paid over.

In case sessions delay to make apportionment supreme court may amerce.

57. The prothonotary shall furnish the clerk of the peace with a copy of such amercement and apportionment forthwith after the same shall be made by the court or a judge; and the clerk of the peace within fifteen days after the receipt thereof shall make out and deliver to the collectors the necessary rolls and instructions, and the collectors for each township, district and place, shall thereupon proceed to collect the amount of such amercement. The clerks of the peace, assessors, collectors, county treasurers and all

Amercement—how collected.

Assessors, collectors, &c., must carry out

CHAP. 70. other officers whose agency now is or by any law might be required to carry out the assessment, collection and payment of county rates, are hereby required and shall be bound to carry out the provisions of this chapter according to its true intent; and in case of neglect or violation of duty shall be liable to the like penalties as are now or as may be hereafter by law imposed for neglect or violation of analogous duties, touching the assessment, collection and payment of county rates, and also to an action for damages at the suit of any party aggrieved.

Compensation
to collectors,
&c.

58. All officers employed under the sessions, supreme court or a judge, in assessing, collecting and levying, shall be compensated for their services under this chapter, at such rate as the sessions shall award; and such compensation shall be a county charge.

Sum assessed
to be paid to re-
ceiver general.

59. The treasurers of the counties shall forthwith pay over all monies received by them under this chapter, to the receiver general, who shall pay to the parties respectively the amounts to which they are legally entitled; and if the sums paid in shall not meet the claims in full, the sessions shall assess and cause to be collected and paid to the receiver general the deficiency; and in their default the supreme court or a judge shall amerce for the same, and cause it to be collected and paid in agreeably to the several provisions of this chapter applicable to assessments by the sessions, and amercements by the supreme court or a judge.

Compensation
for appraiser for
county of Hal-
fax.

60. The sessions of the county of Halifax may assess the county for such sum as they consider sufficient to compensate the appraiser appointed by them on behalf of the county, under the seventeenth section of chapter one of the acts of 1854, for his services in that capacity; and all appraisements heretofore duly made in pursuance thereof shall remain in force.

Parties entitled
to benefit of act

61. Parties for whose lands, taken for the railway, appraisements have been made and set aside, shall be entitled to the benefit of this chapter, and the damages sustained by Messieurs Piers shall be appraised, assessed, collected and paid to the receiver general, who in settling with them shall deduct therefrom the amount paid to them out of the treasury in anticipation of their claim.

Amendment of
proceedings.

62. No proceeding had or taken under any of the clauses of this chapter shall be set aside on any formal or technical ground or in consequence of such proceedings not being in accordance with the strict letter of this chapter, but such proceedings may be commenced anew, renewed or amended in any stage thereof on application to the supreme court or a judge, and when so commenced, renewed or amended shall be as legal, valid and binding on all parties concerned as if no such formal or technical objection had existed thereto, or as if no such new or amended proceedings had been had.

63. The cost of fencing necessary in the construction of the railway shall be levied from the respective counties within which the railway is or should be constructed, at the rate of two hundred dollars per mile of railway within each county, and shall be apportioned by the sessions, subject to amercement by the supreme court, and shall be collected and paid over to the receiver general in the manner directed by this chapter in the case of railway damages. No county wherein this chapter shall be carried out *bona fide* shall be required to assess in any one year for damages to lands and costs of fencing. The costs of fencing shall be payable in two years, one half in each year, and the first half thereof shall be imposed and collected in the year next following that in which the last instalment for land damages shall have been imposed, or in which the same under the provisions of this chapter should have been imposed.

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Cost of fencing.

64. The court of sessions shall require the treasurers and collectors to give sufficient bonds in the name of her majesty, conditioned for the faithful discharge of their duties.

Bonds from treasurers, &c.

65. If any person shall wilfully obstruct any person acting under the authority of the commissioners in the lawful exercise of their power in setting out the line of the railway, or shall pull up or remove any poles, pegs, or stakes driven into the ground for the purpose of so setting out the line of the railway, or shall deface or destroy any pegs or marks put down or made for the same purpose, or shall wilfully obstruct any of the contractors or their servants or workmen while employed in the construction of the railway, he shall forfeit a sum not exceeding twenty dollars for every such offence.

Obstruction of workmen on railroad—penalty for, &c.

66. If any person shall wilfully obstruct the passing of any engine or carriage along the railroad, or shall maliciously place anything on the railroad calculated to obstruct the passage of any engine or carriage, or to injure or endanger the same, or shall maliciously injure the railroad or anything thereto appertaining or any materials or implements for the construction or use thereof, or any of the property in the possession or under the control of the commissioners as such, he shall be guilty of felony, and be imprisoned in the penitentiary for a term not exceeding fourteen years.

Obstruction to engine, &c.; injuries to railroad—punishment for, &c.

67. If any person shall wilfully obstruct or impede any officer, servant or agent of the commissioners in the execution of his duties upon the railway or upon or in any of the stations or other works or premises connected therewith, or if any person shall wilfully trespass upon the railway or any of the stations or other works or premises connected therewith, and shall refuse to quit the same upon request to him made by any officer, servant or agent

Impeding officers in execution of duty; trespass, &c.

CHAP. 70. of the commissioners, or shall wilfully disturb, break down, injure or destroy any of the fences of the railway or remove the same or any part thereof, or shall blot out or deface any regulations put up on the line or pull down or injure the boards upon which such regulations are affixed—every such person so offending and all others aiding or assisting therein shall severally forfeit a sum not exceeding one hundred dollars for every such offence.

Injury to fences
—penalty for.

Gates—penalty
for leaving
open.

68. If any person shall omit to shut and fasten any gate set up at either side of the railway for the accommodation of the owners or occupiers of the adjoining lands as soon as he and the carriage, cattle or other animals under his care have passed through the same, he shall forfeit for every such offence a sum not exceeding eight dollars.

Driving, &c.,
along the rail-
road—penalty
for.

69. If any person after the railroad or any section thereof shall be opened for use shall himself go thereon or shall ride, drive, or lead any animal thereon, he shall for every such offence forfeit a sum not exceeding eight dollars; but nothing in this regulation shall prevent the passing across the railroad where the same is crossed by any other road on a level therewith.

Animals stray-
ing on railroad;
penalty, &c.

70. If any animal shall be found going at large within the limits of the railroad or any section thereof, after the same shall be opened for use, the owner thereof and the person through whose default or neglect the same shall occur, shall for every such offence severally forfeit a sum not exceeding eight dollars; provided the railroad shall have on the sides thereof where it shall not cross some other road on the same level, a fence approved of by the commissioners.

Riotous con-
duct in rail
cars, &c.; refu-
sal to pay fare—
penalty for.

71. If any person shall travel or attempt to travel in any carriage belonging to the railroad, without having previously paid his fare, and with intent to avoid payment thereof; or if any person having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof; or if any person knowingly and wilfully refuse or neglect on arriving at the point to which he has paid his fare to quit such carriage; or if any person while in such carriage shall offend or annoy the other passengers therein by riotous conduct or by indecent or profane language, or shall disobey the lawful directions of the guard, or shall persist in smoking after a request from the guard or from any other passenger to desist therefrom—every such person shall for every such offence forfeit a sum not exceeding twenty dollars.

Detention
offenders—by
whom.

72. If any person be discovered either in or after committing or attempting to commit any such offence as in the preceding regulation mentioned, all officers and servants of

the commissioners and such other persons as they may call CHAP. 70.
to their aid, and all constables, gaolers and peace officers,
may lawfully apprehend and detain such person until he
can conveniently be taken before some justice, or until he
can be otherwise discharged in due course of law.

73. If any person shall send by the railway any aqua-
fortis, oil of vitrol, gunpowder, lucifer matches, or other
goods of a dangerous character, without distinctly marking
their nature on the outside of the package containing the
same or otherwise giving notice to the book-keeper or
other servant of the commissioners with whom the same
are left at the time of so sending, he shall forfeit for every
such offence a sum not exceeding eighty dollars.

Gunpowder and
dangerous
goods; penalty
for not marking
them.

74. If any person shall wrongfully open or break open
any gate or fence along the line of railway, or shall com-
mit any trespass upon the lands appropriated for railway
purposes, or upon any of the machinery, goods, chattels,
firewood, sleepers or other property, real or personal, be-
longing to the railway department, he shall be liable to be
proceeded against in a summary way, in the name of her
majesty the queen; and upon summons and conviction
before one or more justices of the peace, or a judge of the
supreme court, according to the amount of damages
claimed, he may in cases before a judge of the supreme
court in addition to every actual damage proven be fined
or imprisoned, or both, as the judge may order.

Mode of proce-
dure against
parties for tres-
passing on prop-
erty of railway
department.

Penalty, &c.

75. When any person shall be guilty of stealing any
personal property belonging to the railway department, or
of maliciously injuring the same, the title of such property
may be laid in the queen, and the party stealing or injur-
ing the same may be proceeded against and punished, as
in cases where such property were laid and proved to be
that of a private individual, and where the value of the
property stolen or damaged is laid at a value of two
hundred dollars or under, the party charged may upon a
summary information be arraigned and tried by a judge of
the supreme court without a jury; but such judge shall on
application of the party charged order a trial by indictment
and jury, and the party convicted may be fined or impris-
oned, or both, as such judge may order and determine.

Mode of proce-
dure against
parties for
stealing or ma-
liciously injur-
ing property of
department.

Where value is
under two hun-
dred dollars.

76. In all criminal proceedings under this chapter, and
in all civil proceedings touching real or personal property,
purchased for or belonging to the railway department, the
proceedings may be in the name of and the property
described as belonging to her majesty the queen.

Proceedings to
be in name of
the queen.

77. It shall be lawful for the commissioners to make
and levy such tolls as in their opinion shall be best adapted
for the accommodation of the traffic, and to alter and vary
the same from time to time as they may see fit; provided
that all such tolls be at all times charged equally to all
persons, and after the same rate, whether per ton, per mile,

Tolls—how
levied.

CHAP. 70. or otherwise in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine passing only over the same portion of the line of railway under the same circumstances.

Tolls—how and by whom paid.

78. The tolls shall be paid to such persons and at such places and in such manner and under such regulations as the commissioners shall appoint.

Refusal to pay tolls—penalty.

79. If on demand any person fail to pay the tolls due in respect of any carriage or goods, it shall be lawful for the commissioners to detain and sell such carriage, or all or any part of such goods; or if the same shall have been removed from the premises of the railway, to detain and sell any other carriages or goods within such premises belonging to the party liable to pay such tolls; and out of the money arising from such sale to retain the tolls payable as aforesaid, and all charges and expenses of such detention and sale, rendering the overplus, if any, to the person entitled thereto; or it shall be lawful for the commissioners to recover any such tolls by action at law.

Avoiding the toll by not giving correct account of goods; penalty for.

80. If any person being the owner or having the care of any carriage or goods passing or being upon the railway, shall on demand fail to give to any person appointed to collect the tolls a true and correct account in writing signed by him, of the number and quantity of goods conveyed by any such carriage, and of the point on the railway from which such carriage or goods have set out, or are about to set out, and at what point the same are to be unloaded or taken off the railway; and if the goods conveyed by any such carriage, or brought for conveyance as aforesaid, be liable to payment of different tolls, shall fail to specify the respective quantities or numbers thereof liable to each or any such tolls, with intent to avoid in any case the payment thereof, he shall for every such offence forfeit and pay to the commissioners a sum not exceeding forty dollars for every ton of goods or for any parcel not exceeding one hundred weight, and so in proportion for any quantity of goods less than one ton, or for any parcel exceeding one hundred weight, as the case may be, which shall be upon any such carriage; and such penalty shall be in addition to the toll to which such goods may be liable.

Damages to carriages, &c.

81. If any passenger shall wilfully cut the lining, or remove or damage any part of the carriages, or shall get into or get off of any train when in motion, or at any other place than the passengers platforms, or attempt to do so, every such person shall for every such offence forfeit and pay a sum not exceeding eight dollars.

Passengers—rules of booking.

82. Passengers at the road stations will only be booked conditionally, that is to say, in case there shall be room in the train for which they are booked. If there shall not be room for all so booked, the passengers for the longer dis-

tance will be allowed the preference, and for the same distance they will have priority according to the number of their tickets. CHAP. 70.

83. The owners of goods and property of every description conveyed by the railway, liable to injury from the weather or from smoke, sparks or fire, shall be responsible for their proper protection, unless under a special bargain with the commissioners. Commissioners not responsible for goods injured unless specially agreed for.

84. If any person shall load any carriage on the railway, so that the loading extends more than two feet beyond the flange of the wheels, or shall leave any carriage or goods or things under his charge to remain on the railway, or in any of the depots or sidings thereof, to an obstruction of the working of the railway, every such person for every such offence shall forfeit and pay a sum not exceeding eight dollars. Overloading carriages, &c., causing obstruction to working railway, &c.

85. If any person convicted under any of the preceding sections, from 65 to 84 both inclusive, shall not pay the judgment and costs, and no goods can be found whereon to levy the same, such person may be imprisoned in the common jail of the county for a term not exceeding one day for every one dollar of the amount of the judgment, provided such term shall in no case exceed three months. Persons convicted under preceding section without property may be imprisoned.

86. Chapter forty of the acts of 1861 shall remain in full force and effect, notwithstanding the passage of the present series of the revised statutes or of any repealing act thereon. Chapter forty of acts of 1861 to remain in force.

SCHEDULE.

A.

To wit:

To the sheriff of _____

You are hereby commanded to summon A. B., &c., jurors, duly appointed to appear at _____ on the _____ day of _____ at _____ o'clock, then and there to qualify themselves for the purpose of appraising the damages sustained by certain claimants for damages in respect of lands taken for railway purposes, and in respect of other injuries within the provisions of chapter 70 of the revised statutes, third series, and have you then and there this writ.

Issued this _____ day of _____ A. D., 18—.

B.

Juror's Oath.

You swear that you will truly appraise the damages sustained by the respective proprietors of lands taken for the track of railways and for stations, and that in the case of claimants for damages by reason of the line of railway having deprived them of access to their lands, or having

CHAP. 70. destroyed or impaired any easement or privilege which they had enjoyed in relation thereto, you will truly appraise the damage so sustained by such parties respectively; and you do swear that in every case you will faithfully examine the premises, and will investigate each case according to the circumstances, and that you will impartially form your judgment of the damages as well prospective as present, including loss for delay of payment; and also will impartially consider and estimate the relative benefit as well as injury to the property by the construction of the railway, and will deduct the benefit likely to be derived by the claimants from the railway running near to their lands, and that you will in all things decide according to the best of your judgment and ability. So help you God.

C.

This is to certify that A. B. is entitled to receive the sum of \$——, which on the —— day of ——, 18——, was appraised for railway damages under chapter seventy of the revised statutes, third series, payable to the said A. B., or his order, in two equal annual instalments in the manner following, that is to say: one half of the said sum on or before the expiration of one year from the date of the appraisement as above mentioned, and the other half on or before the expiration of two years from that date, together with interest on each instalment after the time of payment shall have elapsed.

Given under my hand this —— day of ——, A. D. 18——.

C. D., custos of county of ——.

E. F., clerk of the peace.

Part the Second.

[ACT PASSED EIGHTEENTH APRIL, 1864.]

Contract for
line to Pictou
to be made.

1. The governor in council is hereby authorized to contract for the extension of the railway from the station house at Truro to the navigable waters of the harbor at Pictou, and as far as practicable on a site adapted for a common line for an extension of a line of railway from the station aforesaid to the frontier of New Brunswick.

Provisions of
chapter ap-
plicable.

2. The provisions of the chapter of the revised statutes, "of provincial government railways," so far as may be, are hereby made applicable to the construction and management of such section.

Savings' bank
deposits may be
appropriated
and debentures
issued.

3. The governor in council may appropriate any deposits in the savings' bank towards defraying the costs of construction of such section, and may also for the purposes of this chapter issue provincial debentures, bearing in-

terest at a rate not to exceed six per cent, redeemable in twenty years, and not to exceed the sum of sixteen hundred thousand dollars in the same manner as is provided for issuing debentures under such chapter of the revised statutes. CHAP. 71.

4. Chapter twenty-two of the acts of 1863, entitled "an act to authorize the construction of a further section of provincial railways," is repealed. Chapter twenty-two acts 1863 repealed.

CHAPTER 71.

OF RAILROADS OTHER THAN PROVINCIAL GOVERNMENT RAILROADS.

1. The proprietor of any railroad whereon any locomotive engine shall be run shall cause a suitable bell or steam whistle to be kept on every engine while running, and which shall be rung or blown at the distance of at least eighty rods from every place where the rail crosses any other road upon the same level with the rail, and shall be kept ringing or sounding until the engine has crossed. Bells or whistle to be kept on engines; when to be rung or sounded.

2. The proprietor of every such railroad shall cause boards to be placed, well supported by posts and constantly maintained, across every road at every place where crossed by the rail on the same level; such boards and posts to be of a height to be easily seen by travellers without impeding the travelling; and on each side of the boards shall be painted in capital letters at least nine inches high the following inscription, to be kept always plainly legible: "railroad crossing,—look out for the engine." Painted boards at crossings.

3. Upon application to the sessions, setting forth that in addition to the foregoing provisions it is necessary for the security of the public that gates should be placed across any such railroad where the same shall cross any road on the same level therewith, and that persons should be stationed at such gates to open and close the same when required for the passing of the engine, the sessions shall investigate the application and hear evidence thereon; and if they shall be of opinion that the placing of such gates and the stationing of such persons thereat is necessary for the security of the public, shall make an order accordingly with which order the proprietor shall comply; but no such order shall be made unless a summons, to be issued by the clerk of the peace, setting forth the nature of the application, shall be served on the manager or Gates and keepers at crossings may be ordered by sessions.

CHAP. 71. person having charge of the railroad or some known agent of the proprietor thereof, actually employed in and about the railroad, at least fourteen days before the first day of the sitting of the sessions at which the investigation shall take place, requiring cause to be shewn against such application.

Fine for violation of preceding sections.

4. If any proprietor shall violate any of the provisions of the three preceding sections, he shall for every offence forfeit a sum not exceeding two hundred dollars.

Fine for obstructing railroad.

5. If any person shall maliciously obstruct the passing of any engine or carriage along any railroad or shall maliciously place any thing on any railroad now or hereafter to be constructed in this province calculated to obstruct the passing of any engine or carriage or to injure or endanger the same, or shall maliciously injure such railroad or any thing thereto appertaining or any materials or implements for the construction or use thereof, such person, and also every person abetting the offence, shall forfeit a sum not exceeding two hundred dollars or be imprisoned for a term not exceeding two years.

Fine for going upon or leading animals on the railroad.

6. If any person after any such railroad shall be opened for use shall himself go thereon or shall ride, drive or lead any animal thereon without the consent of the proprietor, he shall for every offence forfeit four dollars; but nothing in this section shall prevent the passing across the railroad where the same is crossed by any other road on a level therewith.

Fine for cattle trespassing on railroad limits.

7. If any animal shall be found going at large within the limits of any such railroad after the same is opened for use, the person through whose neglect the same shall occur shall for every offence forfeit one dollar; provided the railroad shall have on the sides thereof where it shall not cross some other road on the same level, a lawful fence.

Imprisonment when no goods to satisfy fine.

8. If any person convicted under any of the two preceding sections shall not pay the judgment and no goods can be found whereon to levy, he may be imprisoned for a term not exceeding one day for every one dollar of the amount of the judgment; such term in no case to exceed three months.

Special constables, how appointed; their badge and duty.

9. In order more effectually to prevent breaches of the foregoing regulations, the general sessions or any special sessions not interested in the railroad or connected therewith may appoint and swear in constables for such railroad, to be nominated by the proprietor; and such constables shall be stationed at such places as may be deemed necessary at the expense of the proprietor, and shall carry such distinguishing badge when on duty as the general or special sessions shall direct, and shall have all the powers of constables in preventing such breaches, and for apprehending offenders and taking them before justices of the

peace, and for preserving public peace and order on and within the limits of the railroad. CHAP. 72.

10. The word "proprietor" when used in this chapter shall include his agents and servants, and the word "road" shall include streets, lanes and highways. Definition of terms.

TITLE XX.

OF SEWERS, COMMONS, AND COMMON FIELDS.

CHAPTER 72.

Amended 1868 Chap 11

OF COMMISSIONERS OF SEWERS AND THE REGULATING OF DIKED AND MARSH LANDS.

1. All commissions issued for the appointment of commissioners of sewers shall continue in force till the governor in council shall otherwise direct. Commissions already issued to continue in force.

2. The governor in council at the request of any of the proprietors of any marsh, swamp or meadow lands, may appoint one or more commissioners of sewers for the county, township or place where such lands lie, who shall be sworn into office by a justice of the peace, and such swearing shall be entered in the commissioners' book of record, which shall be evidence of the fact; and the commissioners shall appoint a clerk, who shall be sworn into office by one of the commissioners, and the swearing shall be entered in the book of record, which shall be evidence of the fact. Commissioners, how appointed and sworn in; clerk to be appointed and sworn.

3. Two thirds in interest of the proprietors of any marsh, swamp or meadow lands, within the jurisdiction of such commissioners, may by themselves or their agents select one or more commissioners to carry on any work for reclaiming such lands; and they may at any time add to or diminish the number of commissioners selected or supersede any or all of them, and choose others instead; and the choice or dismissal of any commissioners for or from the management of any particular land shall be made in writing, under the hands of two-thirds of the proprietors in interest in such lands, and shall be entered in the book of record or filed by the clerk. Whenever any marsh, swamp or meadow lands lie partly in two counties, one or more commissioners of sewers may be chosen therefor out of one or both counties in which such lands lie. Commissioners, how chosen to carry on work; how dismissed.

4. The commissioners so chosen may require the proprietors of such lands to furnish men, teams, tools and Powers of commissioners for carrying on

CHAP. 72. materials to build or repair any dikes or wears necessary to prevent inundation, to dam, flow, or drain such lands, or to secure the same from brooks, rivers, or the sea, by aboiteaux or breakwaters, or in any way they may think proper; and in case of neglect may employ men and teams, and provide tools and materials for that purpose at the expense of such proprietors; the commissioner so chosen shall consult such other commissioners within the township, county or place as two thirds in interest of the proprietors of the lands in question, personally or by their agents shall name, as to the practicability of the work, or anything relating to the same. In case of the commencement of any new work, two-thirds in interest of the proprietors of the lands shall first agree thereto.

Overseers may be appointed; how sworn.

5. Commissioners may appoint from among the proprietors of such lands one or more overseers to assist them, who shall be sworn by one of the commissioners.

Notice to be given proprietors.

6. Commissioners shall in ordinary cases cause three days notice, exclusive of Sundays, to be given to the proprietors of land, or to their known agents, where they reside within ten miles of the place where the labor is required to be done, to attend and furnish labor and materials; but in cases of sudden breaches in any works, or apprehension thereof, the immediate attendance of each proprietor may be required.

Assessment to be made, and for what purposes.

7. The commissioners so chosen may assess the owners or occupiers of such lands for any expenses incurred by them or their predecessors, whose accounts remain unsettled, for dikes, wears, drains, aboiteaux or breakwaters, including one dollar and fifty cents per day for every commissioner while actually employed, and a reasonable sum for the payment of the clerk, overseers and collector, having regard to the quantity and quality of land of each owner or occupier, and the benefit to be by him received.

Rates exceeding one dollar and fifty cents per acre—how assessed.

8. Where any rate shall exceed one dollar and fifty cents an acre on the whole quantity of rateable land, the commissioners shall summon the owners or occupiers of such land, or their known agents, or such of them as shall reside within ten miles of the work, to meet at a certain place and at a certain time, not less than three days exclusive of Sunday, after service of such summons, when two-thirds in interest of the owners or occupiers present may elect not less than three nor more than five disinterested persons as assessors, who shall be sworn into office the same way as the clerk; and they or a majority of them shall with the commissioners assess the owners or occupiers for the expenses incurred, including a sum not exceeding one dollar and fifty cents a day for each assessor while actually employed.

Commissioners of Wickwire dike may assess.

9. The commissioners for the new or Wickwire dike in Horton, may assess the owners or occupiers of land in

such dike although the rate shall exceed one dollar and fifty cents an acre, provided the rate shall not exceed four dollars an acre on the whole quantity of rateable land, without calling a meeting of the owners or occupiers as provided in the last section, or taking the other proceedings prescribed by the chapter where the rate exceeds one dollar and fifty cents. CHAP. 72.

10. An assessment may be made in the same way in respect of meadow lands and swamps for the original opening or draining thereof, although the rate be less than one dollar and fifty cents an acre on the quantity of rateable land. Meadow and swamp lands assessed for original draining as in last section.

11. If the owners or occupiers, or their agents, attending such meeting shall unanimously agree to an estimate and assessment in writing, to be entered in the books of the commissioners, it shall be valid and binding, as any other rate or assessment. Assessment when agreed to unanimously shall be valid as other rates.

12. All fines, rates and assessments shall be recovered by and in the names of the commissioners so appointed and chosen, with costs as if the same were private debts; and a copy of the assessment, or of such part as may relate to the particular rate sued for, shall be sufficient proof of the assessment having been made, and of the liability of the owner or occupier of the land in question to pay the same; and no fine, rate or assessment shall be subject to any set off of a private nature, or be connected with any private claim on the part of the plaintiff. Fines, rates and assessments, how recovered; private set off disallowed.

13. When no goods of any owner or occupier of such lands can be found within the county where they lie, or the commissioners shall not think prudent to proceed under any judgment so obtained against such goods, the commissioners may let so much of the land as will pay the rate and expenses thereon, first giving twenty days notice, by handbills, posted in at least three of the most public places in the township where the lands lie. Lands may be leased for payment of rates.

14. If any such lands cannot be let for a sufficient sum to pay the rate and expense, the sheriff or his deputy, at the request of the commissioners, shall sell the same, or so much thereof, as is necessary to pay the rate and expenses, having given three months previous notice of the time and place of such sale, by handbills, posted in at least three of the most public places in the township where such lands lie; and shall execute and deliver to the purchaser a valid deed of such lands, for which deed, and his attention about the sale, he shall be entitled out of the proceeds to two dollars. A recital in the deed of such handbills having been duly posted, shall be presumptive evidence of the fact. No school or glebe lands shall be sold under this chapter. May be sold if rents not sufficient.

15. Where the present or former owner or occupier of any land, or his known agent, shall not have agreed to the Land only liable where owner hath not

CHAP. 72. building of any dike, wear, aboiteau or breakwater, or to the damming, flowing or draining of such land, the land only shall be liable for the rate or assessment.

agreed to the works.

Deficiencies of rates, how levied and collected.

Action by owners, &c., against commissioner for work, &c.; when sustainable.

16. Any deficiency in the amount of a rate may be levied and collected as an original rate.

17. No commissioner shall be liable to an action for any demand for work or materials furnished by the owner or occupier or his agent, until all rates and expenses thereon against the lands of such owner or occupier shall have been paid, nor until after a reasonable time for making up the rate bill and collecting the same; and before any letting or sale shall take place, the amount due to the owner or occupier of such lands for work or materials, shall be deducted from the amount due from such owner or occupier.

Owners and occupiers required to furnish labor; fine for neglect.

18. Every owner or occupier of such lands or their agent, shall when required by the commissioners, provide at a certain time and place named a sufficient number of laborers with tools, carts and teams, in proportion to the quantity of land owned or occupied; and for each day's neglect in case of a sudden breach, or the apprehension of one, shall pay besides his rate or assessment, a fine of one dollar for each laborer, and a like sum for each cart or team so required. All fines when recovered to be applied for the benefit of such lands generally.

Damage for sods or soil; how assessed.

19. When sods or soil shall be cut off the land of any proprietor inside or outside of the dike, for the purpose of making or repairing of such dike, or when such lands shall be washed away or diked out, or injured by carting over the same by order of the commissioners, such damage shall be valued, assessed and paid as other dike rates. If there be any lands so reclaimed, lying undivided and in common, the same shall be as far as it may be available allotted to the party injured, and the balance only if any assessed as above.

Powers of commissioners.

20. When sods or soil shall be cut off the lands of any proprietor inside or outside the dike, for the purpose of making and repairing such dike or an aboiteau, the commissioners shall have power to settle the value of the same with the owner or owners of the land, provided the damage does not exceed five dollars each person, and if the commissioners and owners cannot agree, each party shall choose one freeholder as appraiser, and such two appraisers shall appoint a third freeholder to act with them, and the decision of any two such freeholders shall be final; and if the appraisers so appointed do not allow one sixth more than had been offered by the commissioners, the owners shall pay all the expenses consequent upon such appraisement.

Clerk to keep record.

21. The clerk of the commissioners shall keep a record of all their proceedings, and a fair account of all monies expended by them, open to the inspection of all persons

interested therein on payment for each search and examination of the book at one time of twenty cents, and a copy shall be furnished to every person interested when demanded on payment of ten cents for every ninety words. CHAP. 72.

22. Whenever by the making or repairing of a breakwater by direction of a commissioner of sewers, salt marsh lying outside the same shall be benefitted thereby, the same shall be taxed and assessed towards the expense of the breakwater in proportion to the benefit derived. Salt marsh—
when taxed.

23. Whenever in the draining of any swamp or meadow land a part shall be benefitted, the proportion of the expense shall be assessed on that part only. Expense to be
assessed on the
parts benefitted

24. A clerk or overseer or collector shall be a competent witness to prove any fact connected with the duties of his office, although a proprietor in the land included in the assessment; except in a matter touching the particular rate or assessment upon his own land or himself in relation thereto. Competency of
clerks and
other officers as
witnesses.

25. No commissioner of sewers shall hold the office of clerk or collector. Commissioner
shall not be
clerk.

26. When any commissioner of sewers having the charge of any land, shall think it necessary to have a plan thereof shewing the several lots and boundaries and the names of owners or occupiers, he may employ a surveyor to make such plan, and order the expense to be laid on the land so surveyed as other charges, and may require the owners or occupiers, or their agents, to point out to the surveyor the boundaries of their respective lots, and the owners, occupiers and agents so called upon shall be bound by such survey and plan. Plans when
necessary—
how obtained.

27. Where any lands enclosed by dikes shall by other dikes erected outside the same, be enclosed and protected, the commissioner in charge of the lands reclaimed by outer dikes shall call a meeting of the proprietors of the land within the whole level contained and enclosed by the outer dikes, who shall reside within the township or within ten miles of the place where such lands lie, giving six days notice of the time and place of meeting to each proprietor or his known agent; and two thirds in interest of such owners or occupiers present, or in case of their neglect then the commissioners, shall elect not less than three nor more than five disinterested freeholders, who being sworn before a justice shall determine what proportion or degree of benefit hath accrued or is likely to accrue to the old or inner dikes and the lands lying within the same from the new or outer dikes, and shall settle and declare the proportion of expense the proprietors of the lands within the old dikes ought annually to contribute and be assessed towards the maintenance and repair of the new dikes; and such persons, or two thirds of them, shall make a report in writing of their proceedings, which shall

Outer dikes
protecting
lands enclosed
by inner dikes;
how kept in
repair.

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Outer dikes
ceasing to pro-
tect inner dikes

Proprietors in-
terested in in-
ner dikes may
take proceed-
ings to compel
repairs of outer
dikes.

Dikes injured
by pasturage or
roads; how re-
paired.

Applications for
drainage; how
made; duty of
commissioner
thereon.

be entered in the book of record for such outer dikes, and every sum or proportion of expenses so settled and declared shall be borne upon the lands within the inner dikes, and be assessed and collected as other dike rates.

28. If such outer dikes shall at any time cease in whole or in part to protect such inner dikes, the lands within the inner dikes shall not for such time contribute or be assessed to the support or repair of the outer dikes.

29. If at any time two thirds in interest of the proprietors of the lands within the inner dikes shall be apprehensive that the outer dikes are unsafe or out of repair, two thirds in interest of the proprietors of the whole level may call upon one or more commissioners to examine the outer dikes; and if it appear to him or them to require repair, he or they with the assent of such two thirds in interest of the proprietors of the whole level, shall forthwith cause the same to be repaired, or otherwise with the like consent put the inner dikes in a state of repair, as shall seem most advisable. If the inner dikes be repaired, then the proprietors of the lands enclosed thereby shall bear the expense.

30. If any person shall pasture marshes or other lands enclosed by a common dike or without and adjoining such dike, or shall make a road over such dike whereby it shall be injured, the commissioners may make an order on such person as often as occasion may require for repairing the injury by a certain day to be named therein; and in case of refusal of obedience to such order the commissioners shall cause the injury to be repaired, and the person disobeying the order shall forfeit for every offence two dollars, which, with the costs of the repair, may be recovered and applied as other dike rates.

31. On application by any proprietor of marsh, swamp or meadow lands, in writing, signed by him or his agent, to the commissioners for a county or township in which the lands lie, or in case there has been a commissioner or commissioners selected by two-thirds in interest for carrying on work over the lands whereof the same forms a part, then to such commissioner or commissioners, setting forth that the same are frequently overflowed and rendered unproductive, the commissioners or any three of them, or the commissioner or commissioners so selected, as the case may be, shall inquire into the merits of the application, and may direct such lands to be drained by causing new or old drains to be opened through the same or any adjacent land; and such commissioner or commissioners may order such measures as they may deem proper for rendering the lands productive, and may require the proprietors or occupiers of the lands through which the drainage shall be ordered, to perform a just proportion of the labor necessary for the purpose, and shall have power to tax all lands benefitted by such drainage, and the proprietors or

occupiers thereof for the expenses incurred, and for damage arising therefrom, in proportion to the benefit to be received by such lands respectively, by a rate according to the quantity and quality of the lands owned by the proprietors respectively; which rate shall be levied and recovered as other dike rates are; but no such rate shall be payable until ten days after notice given by the commissioner or commissioners, or his or their collector or clerk, to the proprietors or occupiers, or their known agents respectively, residing within ten miles of the lands drained, of the amount thereof, or in case of an appeal, until after the decision thereon. CHAP. 72.

32. Two-thirds in interest of the proprietors of any body of marsh, diked or undiked, may on application in writing, specially require the commissioners of sewers having such land in charge, or in case there be none, may select any other commissioner for the purpose of making, repairing or altering any private roads or bridges leading through or across the same which such majority of two-thirds in interest may deem expedient or advantageous; and the commissioners so appointed or required may call upon the proprietors of such land to furnish men, teams, tools and materials to carry on such works, and may assess the owners or occupiers of such lands according to the benefit to be derived, and collect such rates in the same way as ordinary dike rates. Making, altering, &c., roads, &c., through diked lands.

33. On application in writing, two-thirds in interest of the proprietors of any part or portion of any diked marsh or meadow land, desiring to flow the same, may direct the commissioner in whose jurisdiction such lands may lie, or in case there is none, any commissioner selected by themselves from the same county or town, to proceed immediately and set off such part or portion into a separate body, and dike out such part or portion for the purpose of flowing the same; and such commissioner may require the proprietors or occupiers of such lands to furnish their proportions of labor and materials necessary to erect a division dike for that purpose, and shall assess them for the expenses and damages thereof according to the benefit to be received by such flowing; provided always that whenever it shall appear to any commissioner of sewers adjoining such flowed lands that such division dike is insufficient, and such lands adjoining are endangered thereby, it shall be lawful for such commissioner to repair such division dike and collect the expenses thereof from the proprietors of land so diked out. Flowing diked lands.

34. The expenses of repairing the dike cut for such flowing shall be borne by the proprietors of the land so diked out and flowed. Expenses, how borne.

35. If any proprietor or occupier taxed shall within seven days after being notified thereof give notice to the Proprietors dissatisfied with rates may have

CHAP. 72.

assessors chosen, whose decision shall be final.

commissioner or commissioners in writing, signed by himself or his agent, that he is dissatisfied with the rate, such commissioner or commissioners shall summon the owners or occupiers of such lands or their known agents or such of them as shall reside within ten miles of the work, to meet at a certain place and on a certain day, being at least three days, exclusive of Sunday, after service of such summons, when a majority in interest of those present shall elect not less than three nor more than five disinterested persons as assessors; and the assessors or a majority of them, having been first sworn into office in the same way as the clerk, with such commissioner or commissioners, shall assess such owners or occupiers for the expenses incurred, including a sum not exceeding one dollar and fifty cents a day for each assessor while actually employed, and the decision of the assessors or any three of them shall be final.

Mode of procedure where the provisions of last section are not complied with.

36. In case the proprietors neglect to meet at the time and place appointed or to appoint assessors, or in case the assessors or a majority of them neglect to perform the duties imposed upon them, the commissioner or commissioners shall forthwith submit and refer such rate to three other disinterested commissioners of sewers of the county or township within which the lands lie, by name, who shall forthwith revise, and, if they see fit, amend such rate, and the decision of the revising commissioners, or any two of them, shall be final.

Damages to lands of persons not applicants; how valued and assessed.

37. When the land of any proprietor within such marsh, swamp or meadow land, other than that of the applicant, shall have been injured by such drainage or other measures ordered, the damage shall be valued, assessed, and paid in the same manner as directed for the expenses incurred in such drainage.

Cases of two proprietors, but neither owning two thirds, how provided for.

38. Where any diked marshes are owned by two persons in such proportions that neither is interested to the extent of two-thirds, either party may require one or more commissioners to take charge of and carry on any work necessary for repairing the dikes thereof.

Certiorari for removing proceedings into supreme court.

39. If any owner or occupier of land think himself aggrieved by the proceedings of the commissioners or of any person acting under this chapter, he may remove the proceedings of such commissioners by certiorari into the supreme court, where they shall be examined, if necessary, and such determination made as shall be proper; but sufficient security shall be first given by the applicant to the prothonotary of the court for payment of costs to be awarded and taxed.

Fines for clerks and other officers neglecting duty.

40. All clerks, collectors, overseers and assessors, who shall neglect or refuse to comply with their duties, shall be liable to a fine of two dollars for each offence, to be collected and appropriated as other fines under this chapter,

41. Every notice required to be given unless herein CHAP. 73.
otherwise directed may be a verbal notice to be given to
the parties in person or left at their dwelling houses if
known, and within the distance limited in this chapter.

Notices may be
verbal unless
otherwise
specified.

42. Two-thirds in interest of the proprietors of any
marsh, swamp or meadow land, may make choice of a
collector, overseers and assessors; may order, confirm or
disallow any plan of lands, and settle the wages to be paid
to or for the collector, overseers, laborers, carts or teams,
and the price to be paid for materials, and cause the same
to be entered in the book of record for the guidance of
the commissioners.

Two-thirds of
proprietors
may choose col-
lectors and
other officers,
settle rates of
wages, &c.

43. No commissioner shall be liable for any act of his
predecessors in office about any work in which such com-
missioner is engaged, unless for money he might or could
have collected on account of work done by his prede-
cessors.

Commissioner,
how far liable
for his prede-
cessor's acts.

CHAPTER 73.

OF COMMONS.

1. The sessions shall make regulations respecting com-
mons in the several townships and enforce the same by
penalties not exceeding eight dollars; and they shall have
the general management of the commons and the control
of the supervisors in the discharge of their duties in
relation thereto.

Sessions to have
the manage-
ment of com-
mons.

2. Nothing in this chapter contained shall extend to
the city of Halifax, nor to any commons regulated by a
special act remaining unrepealed.

Halifax com-
mon and com-
mons regulated
by special acts
exempted.

CHAPTER 74.

OF COMMON FIELDS.

1. Each proprietor of lands lying unfenced or in a
common field shall once in two years, on six days notice
given him or his agent by the adjoining proprietor, run
the lines, and make and keep up the boundaries of such
lands, by stones or other sufficient marks; and any person
neglecting so to do shall forfeit four dollars.

Lines and
boundaries;
how kept up.

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Regulations to be made at general annual meeting.

Regulations to be recorded.

Fine for non-compliance with regulations.

Proceedings to compel the erection of fences.

Brands to be entered in clerk's book; fee therefor.

Fine for a second entry of same mark.

Fine for unauthorized or counterfeit brands.

Proceedings to compel proprietor of adjoining lands to repair his fences.

Proprietors in common fields desirous of fen-

2. The proprietors of common fields shall meet annually on the first Monday of September, or on some other day to be appointed at a general meeting, at some convenient place, and by vote of a majority in interest of those present may make regulations respecting the managing, fencing and improving the same, and keeping the fences thereof in repair, and the making and repairing of roads and bridges in and across such common fields as may from time to time appear expedient.

3. The regulations shall be entered in a book to be kept for the purpose, and shall be signed by the chairman of the meeting; and the production of the book and proof of the entry made therein shall be sufficient evidence of the regulations.

4. If any person shall not comply with the regulations, he shall forfeit a sum not exceeding two dollars.

5. In addition to any penalty imposed by this chapter, if any proprietor shall after three days notice from another proprietor, neglect to obey any regulations of the proprietors, under which he shall be bound to make or repair any fence, the fence viewer shall on application, make or repair such fence, if he shall think it insufficient, and the person so refusing shall pay double the expense to the fence viewer.

6. Every brand or mark adopted by the proprietors of any common field by their regulations, for branding or marking animals to be turned thereon before being used, shall be entered in the town clerk's book, and he shall receive twenty cents therefor.

7. The town clerk after entry of such brand or mark shall not enter any other brand or mark similar thereto under a penalty not exceeding forty dollars.

8. If any proprietor of a common field or any person by his direction, shall with a brand or mark not recorded or entered by the town clerk, brand or mark any animal for the purpose of turning the same into a common field, or shall counterfeit any such brand or mark for the purpose of branding or marking any animal, every person so offending or being accessory thereto, shall forfeit a sum not exceeding twenty dollars.

9. Every proprietor of any field adjoining a common field enclosed and improved, in case his part of the fence dividing his land from such common field shall become defective, shall immediately make the same a legal fence; and in case of his neglecting so to do within three days after notice given him by the field keeper or any proprietor, any fence-viewer on application may forthwith cause the same to be repaired; and the person who ought to have repaired the same shall pay double the expense thereof to the fence-viewer.

10. If any proprietor in a common field shall desire to have his land separately fenced, he shall unless otherwise

assented to by two-thirds in interest of the whole proprietors, bear the whole expense of fencing the same, and shall be bound to keep such fence in repair at his individual expense.

11. At the annual meeting the proprietors shall appoint from among themselves a committee of not less than three nor more than five, to carry into effect the regulations made respecting such common field for the ensuing year.

12. Whenever the committee shall find it necessary to raise money to carry into effect any regulation not applying to the making or repairing of roads or bridges in or across such common field, they shall assess the amount on the several proprietors or occupiers of the common field by an even and equal rate, according to the quantity and quality of land held; and in cases of regulations applicable to the making and repairing of roads and bridges in or across such common field, the committee shall assess the amount on the proprietors or occupiers by an even and equal rate, according to the benefit to be derived from such roads and bridges by each proprietor or occupier respectively.

13. The last section shall not extend to any common field on the Grand Prairie or Wickwire dikes in Horton, but the committee for any common field on such dikes shall have power to make and repair all fences, gates, roads and bridges in, across or around the same, to call meetings of the proprietors, giving three days notice to all proprietors residing within six miles of their clerk's office, and to do all acts necessary for the security and improvement of such common field, and to notify the commissioners of sewers of said dikes of such expense; and the commissioners shall include the amount in any sum of money to be by them assessed upon the proprietors of such dikes as ordinary dike rates, and shall apply such amount in payment of the expenses incurred, as certified by such committee.

14. The committee may by writing appoint a person to collect from the proprietors or occupiers the several sums assessed upon them respectively; and the collector upon neglect of any party assessed to pay the amount for which he shall have been rated, after due notice of such assessment, may collect the same as if it were a private debt due him.

15. The committee may include in any sum to be assessed, one dollar for the attendance of each of their number, for every day actually employed in carrying the regulations into effect.

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ing shall bear the whole expense unless two-thirds in interest consent.

Committee of management; how appointed, their duty.

Instructions as to assessments for various purposes.

Section 12 not to extend to Grand Prairie.

Power of committee of such dikes.

Collectors appointed by committee; their duty.

Allowance to committee to be included in assessment.

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*Amended in 1865 Capl. Sec 13.**Adding the following section.*

TITLE XXI.

OF THE REGULATION OF TRADE IN CERTAIN CASES.

Provisions under this act shall be directed to the Sheriff or his deputy, or when the Sheriff is interested, to the Coroner"

CHAPTER 75. is interested,

Part the First.

OF SHIPPING AND SEAMEN.

See also act of 1865 Cap 5.

Examination of masters and mates of foreign-going ships.

1. Examinations shall be instituted for persons who are or intend to become masters or mates of foreign going ships, registered in and belonging to this province, in accordance with the provisions of part third of the imperial act, entitled "the merchant shipping act, 1854," and the acts in amendment thereof.

Appointment of local board of examiners—rules for their guidance.

2. The governor in council may appoint local boards of examiners at such ports in this province as he may deem necessary for the purpose of conducting such examinations, and may lay down for the guidance of such boards such rules and regulations as respect the examinations and qualifications of the applicants as shall as nearly as possible correspond and be consistent with the rules and regulations in that behalf required by the merchant's shipping act; and such rules and regulations shall in all respects be strictly adhered to by such boards of examiners, under a penalty of one hundred dollars for any deviation therefrom.

Penalty for breach of rules.

Central board—appointment of; functions of, &c.

3. In addition to the local boards mentioned in the preceding section, the governor in council may appoint a board at Halifax, to be called "the central board of examiners," and such central board shall have and exercise the functions of the board of trade, under section 134 of the imperial act hereinbefore referred to, and they shall report half-yearly to the board of trade.

Certificates of competency—how granted.

4. The local boards of examiners shall duly examine each applicant in strict compliance with the rules laid down for their guidance in that behalf; and if such applicant shall pass a satisfactory examination as regards his sobriety, experience, ability and seamanship, a testimonial shall be given to him by such local board to the effect that he is competent to act as a master or as first, second or only mate of such foreign going provincial ship; and on such testimonial being presented to the central board such board shall grant a certificate of competency, to the effect that he is competent to act as master, first, second or only mate of such foreign going ship, as the case may be, and containing the other particulars required by such imperial

act; and such certificate shall entitle the recipient to all the rights and privileges enjoyed in that behalf by persons to whom certificates of a similar kind are granted under the act hereinbefore referred to.

5. No provincial foreign going ship shall go to sea from any port in this province unless the master thereof and the mates thereof have obtained and possess certificates of competency as provided in the preceding section; but nothing in this section shall apply to provincial ships trading with the United States of America, British American Colonies, or British and Foreign West Indies.

6. All certificates shall be made in duplicate, and one part thereof shall be kept and recorded in the office of the central board, and the other shall be delivered to the party entitled thereto; and every person fraudulently procuring, obtaining or altering such certificate, or permitting the same to be used by any other person, shall for each offence be deemed guilty of a misdemeanor.

7. Each applicant for a master's certificate shall pay a fee of twelve dollars, and each applicant for a mate's certificate shall pay a fee of eight dollars to the local board of examiners; one-half of such fees to be paid in advance on the application being made, and the other half on receiving the certificate; provided that if such applicant shall not pass his examination, he shall forfeit the sum so paid in advance.

8. If the central board or local board of examiners have reason to believe that any master or mate is from incompetency or misconduct unfit to discharge his duties, they may direct any two justices of the peace and one member of the local board to investigate the same; and thereupon such justices may summon such master or mate to appear before them, and shall give him full opportunity of making a defence, and they shall report the result of their investigations to the central board; and such central board shall have power to cancel or suspend the certificate of competency of such master or mate, should the result of the investigation reported to them in their judgment justify such a course. The justices for the purpose of such investigation shall have the power of compelling attendance of witnesses.

9. The master of any vessel registered in and belonging to this province, trading to parts out of the province, shall not carry to sea, as one of his crew, any person, apprentices excepted, without entering into an agreement in writing with such persons specifying what wages he is to receive, the capacity in which he is to act, and the nature of the voyage intended. The agreement shall contain the date when made, and shall be signed by the master, in the first instance, and by each person shipped, at his port of shipment:—it shall be in the form, and shall

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Privileges of holders of certificates.

No foreign going ship to go to sea unless masters and mates possess certificate.

Exemptions.

Certificate to be recorded.

Penalty for altering, &c., any certificate.

Fees.

Proviso.

Cases in which certificate may be cancelled or suspended.

Justices may compel attendance of witness.

Shipping articles in what cases necessary their form, contents, attestation, &c.

CHAP. 75. contain, as far as possible, the particulars in the schedule hereto annexed; and a copy, attested by the signature of the master, shall on reporting the arrival of the vessel be deposited in the customs there. A clause may be inserted therein providing for the sale of the vessel during the voyage intended, and for the discharge of the crew in the event of such sale; but such clause must state the amount of wages to be paid to the seamen upon such sale.

Fines for shipping seamen contrary to the first sec., and for non-compliance with its provisions.

10. The master of any such vessel carrying to sea any such person, apprentices excepted, without having entered into the agreement hereby required, shall forfeit twenty dollars for every such person; and the master not depositing as hereby required, a true copy of the agreement, shall forfeit twenty dollars.

Articles not to lessen seamen's lien for wages.

11. The entering into the agreement shall not deprive any seaman of his lien on the vessel, or of any legal remedy for the recovery of his wages; no agreement made contrary to the above provisions, and no clause depriving seamen of their right to wages in the case of freight earned, by a vessel subsequently lost shall be binding on the seaman. No seaman shall be obliged to produce the agreement, or a copy of it, to support his claim for wages.

Proceedings when seamen refuse to join ship after articles signed.

12. If a seaman having signed the agreement hereby required, shall not join his vessel, or shall refuse to proceed to sea in her, or shall absent himself therefrom without leave, any justice of the peace near the place shall upon complaint made upon oath by the master, mate or owner, by his warrant, cause such seaman to be apprehended and brought before him; and if such seaman shall not satisfy the justice as to such neglect, refusal or absence, the justice shall upon due proof commit such seaman to jail, there to be kept at hard labor for a period not exceeding thirty days; but if such seaman shall consent to join his vessel and proceed on the voyage, the justice if requested by the master, shall instead of committing such seaman cause him to be conveyed on board the vessel or delivered to the master, and shall award to the master the costs incurred in such apprehension, not exceeding the sum of eight dollars, exclusive of jail fees, which shall be deducted from the wages to grow due to such seaman.

Sureties liable for advance and expenses where seamen refuse to proceed on the voyage.

13. If any seaman having received an advance on his shipping, and signing the agreement, and for whom any person shall have become surety and as such subscribed the agreement, shall not proceed on the voyage, such surety shall repay such advance; and if the master or owner shall be compelled to procure another seaman, and thereby incur additional expense, the surety shall also repay the same, provided it do not exceed half the sum originally advanced.

Execution of articles by surety; advance how recovered back when forfeited.

14. The party becoming surety shall subscribe his name to the agreement in the proper column thereof, opposite to the name of the seaman for whom he becomes

surety, and such signature shall render him liable to the extent above declared; and the amount shall be sued for as debts of the like amount by law are; and on production of the agreement, and proof of the execution thereof by the seaman and by the surety, and of the refusal of the seaman to proceed to sea, judgment shall be given against the surety for the advance paid to the seaman, and for the additional expense to the extent above named, together with costs, as allowed by law in cases of debts of the like amount.

15. If any seaman after having signed the agreement, and during the period for which he has agreed to serve, shall without leave absent himself from the ship or from his duty, he shall in cases not of absolute desertion, or not treated as such by the master, forfeit out of his wages to the master or owner the amount of two days' pay for every twenty-four hours absence, and in like proportion for a less period of time, or at the option of the master, the expenses incurred in hiring a substitute to perform his work; and any seaman without sufficient cause neglecting to perform the duty required by the person in command, shall be subject to a like forfeiture for every such offence and for every twenty-four hours continuance thereof; and if any seaman after having signed the agreement or after the ship's arrival at her port of delivery and before the discharge of her cargo, shall quit the ship without a discharge or leave from the master he shall forfeit to the master or owner one month's pay out of his wages. No such forfeitures shall be incurred unless the fact of the seaman's absence or neglect, and the time and duration thereof be entered in the log book; this entry the owner or master shall in cases of dispute be obliged to substantiate by evidence of the mate, or other credible witness.

16. Where the seaman has contracted by the voyage or by the run, the amount of forfeitures shall be ascertained thus:—If the duration of the voyage shall exceed one month, the forfeiture of one month's pay shall be considered a forfeiture of a sum bearing the same proportion to the whole wages as a month bears to the whole time spent in the voyage; a forfeiture of two day's pay or less shall be considered a forfeiture of the sum bearing the same proportion to the whole wages as that period bears to the time spent in the voyage; if the whole time does not exceed one month the forfeiture of one month's pay shall be considered a forfeiture of the whole wages; if such time does not exceed two days, the forfeiture of two day's pay shall be considered a forfeiture of the whole wages. The master shall deduct all forfeitures from the wages of the seaman incurring the same.

17. A seaman deserting his vessel shall forfeit to the owner or master all his effects remaining on board, and the

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Forfeitures incurred by seamen for absence and other offences; mode of proof.

Mode of computing forfeiture where agreement is by the voyage.

Forfeiture in case of desertion.

CHAP. 75. wages due to him; provided the circumstances of the desertion be at the time entered in the log book, certified by the signature of the master and mate or other credible witness. The absence of a seaman within twenty-four hours immediately preceding the vessel's sailing without leave of the master, or at any time under circumstances shewing an intention not to return, shall be considered an absolute desertion; and if such desertion shall take place out of this province and the master shall be obliged to engage a substitute for the deserter at an increased rate of wages, he shall recover from such deserter the excess of wages paid to such substitute as wages are hereby made recoverable.

Imprisoned seamen may be taken on board to complete voyage.

18. If any seaman or apprentice is imprisoned on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, or of his having committed any other breach of discipline, and if during such imprisonment and before his engagement is at an end his services are required on board his ship, any justice may at the request of the master or of the owner or his agent cause such seaman or apprentice to be conveyed on board his said ship for the purpose of proceeding on the voyage, or to be delivered to the master or any mate of the ship or to the owner or his agent, to be by them so conveyed, notwithstanding that the termination of the period for which he was sentenced to imprisonment has not arrived.

Harboring or secreting seamen, how punished; seamen's debts how and when recoverable.

19. Any person harboring or secreting a seaman who shall have signed the agreement hereby required and absented himself from his vessel without leave, knowing or having reason to suspect him to be so absent, shall forfeit four dollars. No debt over one dollar incurred by a seaman after signing the agreement shall be recoverable until the conclusion of the voyage. The keeper of a public house shall not detain any effects of a seaman for any debt contracted by him. In case of such detention any justice shall on complaint on oath by or on behalf of such seaman inquire into the matter, and he may by warrant cause such effects to be delivered to such seaman.

*Acts of
18. Cap. 5.*

Seamen's wages when and how recoverable.

20. The master or owner shall pay every seaman his wages if demanded within three days after the delivery of the cargo or ten days after the seaman's discharge, whichever shall first happen. The seaman on his discharge shall be entitled to receive one-fourth of the estimated balance due to him, and in default thereof the master or owner shall forfeit to the seaman two days pay for each day not exceeding ten days that such payment without sufficient cause is withheld. This forfeiture shall be recoverable in the same manner as seamen's wages; but this provision shall not apply to cases where the seaman

by the agreement is paid by a share in the profits of the adventure. CHAP. 75.

21. The payment of wages to a seaman shall be valid notwithstanding any bill of sale or assignment thereof or any attachment or incumbrance thereon. No assignment or sale of wages made prior to the earning thereof, and no power of attorney to receive wages expressed to be irrevocable shall be valid or binding on the party making it.

Payment to seamen valid notwithstanding previous assignments.

22. A seaman shall on his discharge be entitled to a certificate signed by the master of his period of service and the time and place of his discharge; and a master refusing such certificate without reasonable cause shall forfeit twenty dollars.

Seamen entitled to certificate; fine for refusing.

23. If a seaman having been three days discharged and desiring to proceed again to sea, shall require immediate payment of his wages, any two justices on his application and proof that delay would hinder him of employment, shall summon the master or owner of the vessel to shew cause why immediate payment should not be made; and if cause be not shewn they shall order payment forthwith; and in default of such payment the master or owner shall forfeit twenty dollars.

Proceedings for wages where seamen about to proceed on a voyage.

24. When the wages due to a seaman do not exceed eighty dollars, any two justices in the neighborhood on complaint upon oath by or on behalf of such seaman, shall summon the master or owner to appear and answer such complaint; and on his appearance, or in default thereof on proof of his having been summoned, the justices shall on the oath of the parties and their witnesses, examine into the complaint and order payment of the amount due; and if such order be not obeyed within two days, they shall issue their warrant to levy the amount awarded by distress and sale of the effects of the party on whom such order was made, rendering to him the overplus if any after deducting the expense attending the complaint and the distress and levy; and if sufficient distress be not found, they shall cause such wages and expenses to be levied on the vessel; and if she be not within their jurisdiction, they shall cause the party on whom the order was made to be committed to jail, there to remain until payment of the amount awarded, and all costs and expenses. The award of such justices shall be final and conclusive.

Wages how collected when under eighty dollars.

25. The stipendiary magistrate at Halifax and any stipendiary magistrate at Pictou, shall within the county of Halifax, and the limits of the jurisdiction of the commissioners of streets for Pictou, respectively, have and exercise the same jurisdiction as is conferred by this chapter on two justices of the peace.

Stipendiary magistrates to have jurisdiction of two justices.

26. A jury shall be allowed in the trial of causes under this chapter, according to the provisions of the chapter of the revised statutes "of the jurisdiction of justices of the peace in civil cases."

Jury allowed.

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Costs to be dis-
allowed in the
vice admiralty
where wages
might be recov-
ered before a
justice.

Medicines to be
kept on board
vessels.

Crews dischar-
ged abroad only
on certificate.

Crews not to be
left abroad un-
less for good
cause duly cer-
tified.

In case of ac-
tion the burden
of proof as to
certificates to
be upon the
master.

Entering the
naval service
shall not be
held desertion.

Seamen's right
to wages and
effects when
entering the
naval service.

27. If a suit for the recovery of a seaman's wages be brought in the court of vice admiralty or any court of record of this province, and it shall appear to the judge that the plaintiff might have had as effectual a remedy by complaint to a justice as above directed, he shall certify to that effect, and no costs of suit shall be awarded the plaintiff.

28. The master of every such vessel shall constantly keep on board a sufficient supply of medicines, suitable to accidents and diseases arising on sea voyages, and in default thereof or in case a seaman shall sustain injury in the service of the vessel, the expense of the surgical and medical advice and attendance and medicine he shall require until he is cured or returns, shall be borne by the owner or master of the vessel without any deduction on account of wages.

29. No such master shall discharge any of his crew at any British port out of this province without the sanction in writing of the officer appointed in that behalf, or of the principal officer of the customs, or of two respectable merchants resident there; nor at any foreign port without the sanction in writing of the British minister, consul or vice consul there, or of two respectable resident merchants; any of whom may make examination on oath, and grant or refuse a certificate of such sanction according to their discretion.

30. No such master shall leave at any place abroad, either on shore or at sea, any of his crew as unfit to proceed on the voyage, or having deserted or disappeared, without having obtained a certificate, as in the foregoing section, approving thereof, if there be any such persons to apply to for that purpose; and such persons may make examination on oath and grant or refuse such certificate according to their discretion.

31. In any action brought for violation of this or the preceding sections, it shall be incumbent on the master to prove his having obtained the certificate thereby required, or prove the impracticability of obtaining such certificate.

32. Nothing herein shall prevent the entry of any person belonging to any merchant ship into her majesty's naval service; such entry shall not be a desertion, and shall not incur any forfeiture whatever: no clause creating a penalty or a forfeiture for such entry shall be inserted in any ship's articles.

33. A seaman received into such service from a merchant vessel not having committed an act of total desertion, treated as such by the master, shall on such entry receive all his effects from such vessel, and if she shall have earned freight, the proportionate amount of his wages from the master up to such entry, in money or a bill on the owner. For failure to deliver such effects and money or bill, the master shall forfeit one hundred dollars. If no

freight has been then earned, the master shall give to the seaman a bill on the owner for his wages then due, payable on the ship's arrival at her destined port. If he be unable to ascertain the amount, he shall give to the seaman a certificate of his period of service and the rate of his wages, and shall produce to the officer commanding such ship of war, the shipping agreement. On such delivery of the seaman's effects and settlement of his wages, the officer commanding shall on request of the master give him a certificate under his hand endorsed on the agreement of the entry of the seaman into such ship of war.

34. The court of justices before whom proceedings are brought for recovery of penalties hereby imposed may make such reduction therein, not exceeding one half of the original amount as they think fit. All such proceedings shall be commenced within two years after the offence; or if committed without the province within six months after the return thereto of the offender.

Court's power to reduce penalties; limitations of actions.

35. The foregoing sections shall not extend to any ship trading coastwise between the ports of this province or to any regarded as coasting vessels by any law of this province.

Coasting vessels not affected by this chapter.

36. All applications for the relief of destitute seamen, or for the payment of the necessary expenses of their conveyance to this province, or to their proper destination, shall be examined and reported upon by the registrar of shipping at Halifax, or at the port of arrival, and it shall be his duty to carry into effect the provisions of "the merchant shipping act of 1854," or any acts in amendment thereof, according to the circumstances of each case, subject to the approval of the governor.

Applications to be examined and reported on by registrar.

37. The funds necessary for the above purpose shall be advanced from the provincial treasury, and when required the reimbursement of any advance so made shall be claimed from the imperial authorities, or the government of the colony or country of the vessel to which the seaman shall belong.

Funds, how obtained.

Reimbursement.

38. Such fees shall be allowed to the officer performing this duty as shall be regulated by the governor in council.

Fees.

39. The powers and authority conferred upon shipping masters by "the merchant shipping act, 1854," and the duties imposed upon shipping masters by the act twenty-two and twenty-three Victoria, chapter forty, for the establishment of a reserve of royal naval volunteers, shall extend and belong to the registrar of shipping at Halifax, and shall be exercised and performed by him according to the circumstances of each case, subject to the approval of the governor.

Authority conferred on shipping masters by merchant shipping act of 1854 and cap 40 acts 22 and 23 Victoria, extended to registrar of shipping at Halifax.

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Schedule in this chapter referred to.

Form of agreement.

An agreement made pursuant to chapter seventy-five, title twenty-one, of an act of the general assembly of Nova Scotia, passed in the twenty-seventh year of the reign of her majesty queen Victoria, entitled "an act for revising and consolidating the general statutes of Nova Scotia," between ———, master of the ship ———, of the port of ———, of the burthen of ——— tons, and the several persons whose names are subscribed hereto.

It is agreed by and on the part of the said persons, and they severally hereby engage to serve on board the said ship in the several capacities against their respective names expressed, on a voyage from the port of ——— to ———, [*here the intended voyage is to be described as nearly as can be done, and the places at which it is intended the ship shall touch, or if that cannot be done, the nature of the voyage in which she is to be employed,*] and back to the port of ———; and the said crew further engage to conduct themselves in an orderly, faithful, honest, careful and sober manner, and to be at all times diligent in their respective duties and stations, and to be obedient to the lawful commands of the master in every thing relating to the said ship, and the materials, stores and cargo thereof, whether on board such ship, in boats or on shore. [*Here may be inserted any other clause which the parties may think proper to be introduced into the agreement, provided that the same be not contrary to and inconsistent with this act.*] In consideration of which services to be duly, honestly, carefully and faithfully performed, the said master doth hereby promise and agree to pay the said crew, by way of compensation or wages, the amount against their names respectively expressed. In witness whereof, the said parties have hereto subscribed their names on the days against their respective signatures mentioned.

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Part the Second.

OF THE REGISTRY OF SHIPS.

Appointment of
registrars.

1. The governor in council may appoint for every port at which they deem it expedient to authorize the registry of ships, a principal officer of customs and of navigation laws, who shall be the registrar for all the purposes contemplated by the imperial act entitled "the merchant shipping act, 1854," and the imperial act or acts since passed.

Appointment of
surveyor.

2. The governor in council may appoint at every such port and at any other port or ports in the province, an officer to superintend the survey and admeasurement of ships in conformity with the said act, and the same person may be appointed both the registrar and surveyor at any such registry port.

Salaries of re-
gistrars and
surveyors.

3. Such registrars and surveyors shall receive for their services in addition to any fees by law allowed, such sums as may be annually granted by the legislature.

Surveyor's fees.

4. Such surveyor shall be entitled to fees for the measurement of every vessel about to be registered for the first time, or requiring measurement for the purposes of registry; which fees shall be paid by the registered owner as follows: two dollars for vessels under one hundred tons; three dollars for vessels from one hundred to two hundred tons; and four dollars for vessels over two hundred tons; ten cents per mile for travelling fees going and returning.

Part of "mer-
chant shipping
act, 1854," re-
pealed.

5. So much of the act entitled "the merchant shipping act, 1854," as is inconsistent with this act, is hereby repealed as to ships registered in this province.

New certifi-
cate—how
granted.

6. In the event of the certificate of registry of any ship being mislaid, lost or destroyed, the registrar of the proper port shall grant a new certificate, as the case may require, on proof by affidavit of the original certificate having been mislaid, lost or destroyed.

Endorsement
of change of
masters.

7. Collectors of colonial duties shall have the same power to endorse from time to time on the certificate of registry of any ship at any port where such ship may be any change of master which takes place at that port, as are given to registrars of shipping under this chapter, and the act of the imperial parliament, entitled "the merchant shipping act 1854," and the imperial acts since passed.

CHAPTER 76.

OF MARINE COURTS OF ENQUIRY.

1. It shall be lawful for the governor in council from time to time and whensoever occasion shall arise or require by commission under his hand and seal to appoint such persons as he shall think suitable to form a court, which shall be called the marine court of enquiry; and such court shall comprise some person or persons of judicial knowledge and habits and some person or persons of nautical skill and experience, and in the commission may be indicated the person to preside over the court. The proceedings of the court shall be assimilated as far as possible to those of ordinary courts of justice with the like publicity.

Governor in council may appoint commissioners to form marine court of enquiry

How composed.

Proceedings of court to be similar to ordinary courts of justice.

2. In the cases following, that is to say:

Whensoever any ship is lost, abandoned or materially damaged on or near the coasts of this province or any island or place adjacent thereto.

Cases wherein marine courts shall have jurisdiction.

Whenever any ship causes loss or mutual damage to any other ship on or near any such coasts, islands or places.

Whenever by reason of any casualty happening to or on board of any ship on or near such coasts, islands or places, loss of life ensues.

Whenever any such loss, abandonment, damage, or casualty happens elsewhere, and any competent witnesses thereof arise or are found at any place within the province.

Whenever a charge of misconduct or incompetency is brought by any person against any master or mate of a British ship;

It shall be lawful for such court to hear and enquire into any such charge of incompetency or misconduct and to make enquiry respecting such loss, abandonment, damage or casualty; and for such purposes they shall have the power given by the first part of "the merchant shipping act, 1854," to inspectors appointed by the board of trade. And so far as relates to the summoning of parties compelling the attendance of witnesses, the regulation of the proceedings and the enforcing of penalties and of obedience to the judgment or orders of the court, shall have the same powers as justices of the peace would have if the proceedings related to an offence or cause of complaint upon which they had power to make a summary conviction or order or as near thereto as circumstances permit.

Powers of court

3. It shall be lawful for the governor in council upon any occasion which he may see fit and at whatever place may be necessary to nominate and appoint any other person

Governor in council may appoint other tribunals with like powers,

CHAP. 76. or persons whomsoever to be a tribunal duly authorized to make enquiry into the several matters aforesaid with the like powers as the court hereinbefore mentioned.

Court may make orders relative to costs.

4. The court may make such order with respect to the costs of any such investigation or any portion thereof as they shall deem just; and such costs shall be paid accordingly, and shall be recoverable in the same manner as other costs incurred in summary proceedings before one or more justices of the peace. But any party aggrieved may appeal from any order made inflicting penalties or for payment of costs as in cases of judgments given by justices of the peace; but such appeal shall in no way affect or interfere with orders or their operation other than as to penalties and costs; and the board of trade may if in any case it sees fit so to do pay the expense of any such investigation.

Appeal from such orders.

Board of trade may pay costs of investigation.

Remuneration of courts—how paid.

5. There shall be paid to the said court or some member or members thereof in respect of services under this chapter such remuneration, whether by way of increase of salary if a salaried official or otherwise, as her majesty's secretary of state for the home department with the consent of the board of trade may direct, to be paid out of the mercantile marine fund.

Judgments upon cancelling certificates, &c.

6. Upon the conclusion of the case or as soon afterwards as possible, the court shall state in open court the decision to which they have come with respect to a recommendation to cancel or suspend certificates, and shall in all cases send a full report upon the case with the evidence and of the judgment and opinion thereon, and such observations if any as the court may think fit to the governor for transmission to the board of trade, and shall also, if they determine to recommend to be cancelled or suspended any certificate, forward such certificate to the board of trade with their report.

Report to be made to governor.

Court may require certificate to be delivered up.

7. The court may if they think proper require any master or mate possessing a certificate of competency or service, whose conduct is called in question or appears to them likely to be called in question in the course of such investigation, to deliver such certificate to them; and they shall hold the certificate so delivered until the conclusion of the investigation, and shall then either return the same to such master or mate, or if their report is such as to enable the board of trade to cancel or suspend such certificate under the powers given to such board by the third part of "the merchant shipping act, 1854," shall forward the same to the lieutenant-governor, to be forwarded to the board of trade to be dealt with as such board thinks fit; and if any master or mate fail so to deliver his certificate when so required he shall incur a penalty not exceeding two hundred dollars.

Penalty for omission.

8. Provided always that nothing in this chapter contained shall be taken to affect in any way the jurisdiction of the vice admiralty court of Halifax, howsoever the same may be acquired.

CHAP. 77.

Not to affect jurisdiction of vice admiralty court.

CHAPTER 77.

OF STEAM NAVIGATION.

1. No sea boat or vessel propelled by steam shall depart from any port or place within this province with passengers without having on board or attached to such boat or vessel, good, suitable and sufficient boats, in good condition and properly equipped, as follows:—For every steamer of the registered tonnage of two hundred tons and upwards, not less than four boats; of the registered tonnage of less than two hundred tons, not less than three good boats; every one of said boats to be provided with not less than six oars and other necessary tackle, and every such boat to be of sufficient capacity to carry not less than twelve adult persons, exclusive of the crews, and shall be of a length of keel not less than seventeen feet; also, one good and sufficient life boat made of metal, fire-proof, and capable of sustaining inside and outside fifty persons, with life lines attached to the gunwale at suitable distances; also, not less than six good life preservers, made of suitable material or floats, well adapted to that purpose. Such life-preservers or floats shall always be kept in convenient and accessible places in such vessel, and in readiness for the use of passengers.

Nature and description of boats to be carried by passenger steamers.

Life boat.

Life preservers.

2. Every such steamboat shall be provided with and have on board in some convenient place not less than twenty-four good and sufficient fire buckets of wood or leather, and six good and sufficient lanterns; also a suitable number of guage cocks properly inserted in the boilers of every such steamboat, and a suitable water guage and steam guage, indicating the height of the water and the pressure of the steam therein, as the inspector may direct, and also one double acting force pump, with chambers of such size as the inspector may direct, according to the size and route of the steamboat, to be worked by steam if it can be employed, otherwise by hand; and to have a suitable and well fitted hose, of at least the length of the vessel, according to the direction of the inspector, kept at all times in perfect order and ready for immediate use, which shall be supplied with water by a pipe connected therewith, and passing through the side of the vessel, so low as to be at all times in the water when the steamboat is afloat.

Every steamer to have fire buckets.

Lanterns.
Guage cocks in boilers.

Water guage.
Steam guage.

Force pumps.

Hose.

CHAP. 77.

Inspector to regulate the weight to the square inch of boiler; regulations to be posted up in steamer.

3. Every inspector appointed under the provisions of this chapter shall regulate and direct the weight to the square inch of the boilers of each steamer inspected by him, and to certify such regulations and directions in writing to the master or owner of the steamboat inspected by him, who, with the engineer of such steamboat, shall be governed thereby; a printed copy whereof the owner or master of such steamboat shall post up or cause to be posted up and keep posted up in some conspicuous part of such steamboat during her continuance on the same route, or until another inspection of such steamboat shall take place.

Penalty for putting greater strength on boiler.

4. If such master, owner or engineer, after the inspector shall have so certified as in the last preceding section directed, shall act contrary to the said regulations, by putting a greater weight upon the boilers than allowed thereby, such master or owner and engineer shall respectively be subject and liable to a penalty not exceeding two hundred dollars for each and every breach of such regulations, to be recovered and applied as hereinafter directed.

Lights to be carried.

5. Every steamboat plying within any of the harbors, waters, bays or rivers within this province, or coming to any port or place within the same, shall carry at the mast head of such steamboat, or upon a staff to be erected over the wheel-house not less than ten feet high above the upper deck at night, during the time she shall be under way, a good, clear and distinct signal white light; and all steam-tug-boats shall carry a red light, and also one distinct white light under the bow of such boat, which lights shall be so kept until alongside of a wharf, or at anchor, on coming into any port or place in said province, under a penalty for each case of violation of this section in a sum not exceeding one hundred dollars, to be paid by the owner or master of such boat or vessel, and to be recovered and applied as hereinafter directed.

Penalty.

Inspectors—how appointed, their duties, salaries.

6. The governor in council may appoint an inspector for the port of Halifax, or if necessary one for any other port within this province; such officers shall be designated inspectors of steamboats, and shall when called upon by the governor in council perform the services required of them under this chapter; the said inspectors when so called upon shall be entitled to receive for their services from the provincial treasury, such sum as the governor in council shall in each case direct.

Inspectors may board and inspect any steamer.

7. Any inspector may at all times go on board and inspect and examine the hull, boilers, machinery, boats, and other parts and appurtenances of any steamer belonging to or steaming from the port or place for which such inspector is appointed, employed in the carriage of passengers, and to satisfy himself that every such steamer is of a structure and in a condition suitable for the service in

which she is employed ; that she has suitable accommodations for her crew and passengers, and is in a condition to warrant the belief that she may in regard to safety to life, be used in navigation as a steamer, and that all the requirements of this law in regard to boats, boilers, machinery, life preservers and other things, are faithfully complied with ; and if he deem it expedient he may direct the vessel to be put in motion, and adopt any other suitable means to test her sufficiency and equipments.

8. When any inspector shall have concluded the examination of any steamer, and approves of such vessel and her equipment, he shall make and subscribe in duplicate a certificate verified under oath, one to be given to the master of said steamer, and the other to be filed with the registrar of shipping of the port, substantially as follows :

Inspector's certificate.

“ Having examined the steamer [*name*] of ——— whereof ——— are owners, and ——— is master, on this ——— day of ———, A. D. 186—.

I [*inspector's name*] do certify that she is in all respects staunch, seaworthy, and in good condition for navigation ; that engine, machinery, pumps and boilers, are sufficient and suitable to be employed in the carriage of passengers without hazard to life, on the route for which placed ; and that the boilers of such steamer can carry with safety from ——— to ——— pounds [*here insert number of pounds*] per square inch, and no more. I further certify that the equipment of the vessel throughout, including boats, life boats, life preservers, lights and other things, is in conformity with the provisions of the law ; and I declare it to be my deliberate conviction, founded on the inspection that I have made, that the said steamer may be employed in the waters hereafter specified, without peril to life from any imperfections of materials, workmanship, or arrangements of the several parts, or from age or use. And I further certify that the said steamer is to run in the following waters, viz. : [*here insert the waters and where she is to run.*]

9. Every inspector who shall be found guilty of any neglect of duty required by this chapter, or who shall wilfully certify falsely under this chapter, touching any such steamer, shall be fined in a sum not exceeding four hundred dollars or imprisoned for a period not exceeding twelve months, or both, in the discretion of the court before which convicted.

Penalty for false certificate or neglect of inspector.

10. In case any inspector on examination of any steamer, finds he cannot, under the provisions of this chapter, grant any such certificate, he shall state in writing under his hand the reasons for refusing such certificate, and shall forthwith serve a copy thereof on the master or owner of such steamer, and file another copy with the registrar of shipping of the port. If such owner or master cannot for the

Proceedings in case inspector cannot grant certificate.

CHAP. 78. space of one hour be found, search for that time being made, so as to be served as in that section mentioned, then the same may be served by serving the same upon the mate or other officer, or one of the crew of such steamer.

Penalty for taking passengers before fulfilling requirements of law.

11. If such steamer shall afterwards go out of any port with passengers, or shall take passengers on board previously to the fulfilling of the requirements of the law, under the said report of the inspector, or until the suggestions and the requirements of said report are carried out and satisfied, the owner or master of such steamer shall be liable to the penalty or penalties imposed by section nine of this chapter.

Penalty for sailing without certificate.

12. If any steamboat shall depart from any port or place in this province where any inspector is appointed, and on a voyage to any other port or place in this province, without having first procured from the inspector of steamboats the requisite certificate hereinbefore provided, the master or owner thereof shall for each such case forfeit and pay a fine not exceeding two hundred dollars.

Fines, &c.—
how recovered.

13. Fines and forfeitures under this chapter may be recovered under the provisions of chapter one of the revised statutes.

CHAPTER 78.

OF WRECKS AND WRECKED GOODS.

Wrecked ships or goods, how, for, and by whom preserved.

1. All ships and goods of every description, wrecked, abandoned or forced on or within the soundings or shores, or found floating within the bays and rivers of this province shall be preserved for the owners thereof; and persons finding such wrecks or goods shall immediately give notice thereof either to the officer of marine enquiry, sheriff, coroner, officers of customs, officers of impost and excise, or a justice of the peace, who shall or a majority of them if more than one, attend forthwith and take all necessary measures for preserving such ship or goods.

Penalties for omission to give notice of finding, &c.

2. Any persons so finding such ship, boats or goods, and not giving such notice, shall be liable to a fine of twenty dollars; any person taking possession of any wrecked ship, boat or goods, and not giving such notice within twenty-four hours, shall be liable to a fine of one hundred dollars; and any person wilfully and knowingly concealing shipwrecked goods or property, shall be guilty of a misdemeanor.

Proceedings and punishment in case of concealment.

3. Any justice upon information on oath made before him that any such goods have been concealed, shall issue

his warrant to search all places where they are suspected to be concealed, and commit to jail any person who shall appear to have wilfully concealed the same, there to remain until delivered by due course of law. CHAP. 78.

4. Any member of a marine court of enquiry, or any justice of the peace may if he shall think the circumstances demand such interference, or any person authorized in that behalf by the governor in council, may examine upon oath, which oath they are respectively hereby authorized to administer, any person belonging to any shipwrecked or stranded vessel, or any other person who may be able to give any account thereof, of the cargo or stores thereof, as to the following matters, that is to say:

Member of marine court or justice of peace may examine parties upon oath, as to wrecks, &c.

I. The name and description of the ship.

II. The name of the master and the owners.

III. The names of the owners of the cargo.

IV. The parts and places from and to which the ship was bound.

V. The occasion of the distress or wreck of the ship.

VI. The service rendered.

VII. Such other matters or circumstances relating to such ship or to the cargo on board the same, as the said person examining thinks necessary.

5. Any of the officers hereinbefore named when any vessel shall be in danger or shall be driven on shore or discovered floating, may command as many men of the neighbourhood as may be necessary to assist in preserving the lives of the people and the property on board such vessel, and may order the person commanding any vessel at anchor to furnish his boats and as many men as he can conveniently spare, and such men are hereby required to give their assistance accordingly. Any person disobeying any such order shall upon information on oath before any justice be committed to jail for trial, unless good security be given for his appearance at the next term of the supreme court for the county; and upon conviction of such offence he shall be subject to a fine not exceeding two hundred dollars or imprisonment for a term not exceeding six months, at the discretion of the court. The property saved may be held in the possession of any of the before mentioned officers until the salvage and charges are paid or sufficient security is given for such payment.

Vessels in distress, how assisted,

Penalty for disobedience of orders.

Property may be held until salvage paid.

6. In the case of ships, boats or goods wrecked or in danger, all persons may, for the purpose of rendering assistance to such ship or boat or for saving the cargo or apparel thereof or for saving life, pass and repass with or without carriages or horses over any adjoining lands without being subject to any interruption by the owner or occupier, so that they do as little damage as possible under the circumstances, and may also deposit on and afterwards remove from such lands any cargo or other articles

Persons may pass over and use private lands in rendering assistance.

ЧАР. 78. recovered from such ship or boat, to remain there for a reasonable time; and any owner, occupier or other person giving interruption or offering hindrance or creating impediments, shall be liable to a penalty not exceeding two hundred dollars.

Penalty for hindrance.

Property in legal custody, not to be interfered with.

7. No person under any pretence whatever shall interfere with any kind of property referred to in this chapter if it be in the legal custody of any person, unless his assistance be required; and the person in charge of any vessel wrecked or in distress, or the officer who shall come to his assistance, may repel by force any attempt to meddle therewith without his consent. Any person convicted of molesting or obstructing any officer or other person having charge or employed in making salvage of any such vessel or goods shall be punished as for a misdemeanor.

Molesting officers, &c., a misdemeanor.

Proceedings of inferior courts to be confirmed by supreme court though deficient in legal form, unless in cases of wilful error.

8. If any proceedings under this chapter be removed from a court of inferior jurisdiction to the supreme court, and they shall appear to have been in accordance with the justice of the case, the supreme court shall confirm the same notwithstanding the want of legal form therein, or may correct or amend the same and give final judgment upon the merits, and shall wholly reverse the proceedings only for wilful and corrupt error.

SALVAGE.

Salvage, how defined and remunerated.

9. Whenever any ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water situate within the limits of this province, and services are rendered by any person,

I. In assisting such ship or boat;

II. In saving the lives of the persons belonging to such ship or boat;

III. In saving the cargo or apparel of such ship or boat or any portion thereof;

IV. In saving any wreck;

There shall be payable by the owners of such ship or boat, cargo, apparel, or wreck, to the person by whom such services or any of them are rendered, or by whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services or the saving of such wreck—the amount of such salvage and expenses, which expenses are hereinafter included under the term of salvage, to be determined in case of dispute in manner hereinafter mentioned.

Salvage as to lives to be first paid.

10. Salvage in respect of the preservation of the life or lives of any person or persons belonging to any such ship or boat as aforesaid, shall be payable by the owners of the ship or boat in priority to all other claims for salvage, and in cases where such ship or boat is destroyed, or where the value thereof is insufficient after payment of the actual

expenses incurred to pay the amount of salvage due in respect to any life or lives, the person to whom such salvage is accredited may apply to a marine court of enquiry, who may on investigation of the case if it should see fit recommend the claim to the consideration of the board of trade for some remuneration in its discretion out of the mercantile marine fund.

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Marine court may recommend claim to board of trade, where ship destroyed, &c.

11. Whenever any dispute arises as to salvage, and the parties cannot agree as to the settlement thereof by arbitration or otherwise, it shall be referred to the decision of any two justices resident near the place where the wreck is found or the ship or boat is lying, or to which the property saved is removed, and every dispute with respect to salvage may be tried and adjudicated upon on the application either of the salvors or of the owners of the property saved or their respective agents.

Disputes as to salvage, how adjudicated.

12. Whenever any such reference takes place, the justices may determine the dispute themselves or may call to their assistance, by some writing under their hands, some competent person, and any two of them shall have power to decide the case. The award shall be made within one week from the appointment of the two justices or of the said third person with power for such referees or two of them, in case of the appointment of a third to extend the time by writing under their hands.

Award, when made.

13. The arbitrators who act shall be severally entitled to four dollars a day, but not to exceed in the whole twenty dollars for each, to be paid by the parties or some or one of them, and in such proportions as the award may direct.

Fees of arbitrators.

14. The arbitrators shall have power to call for the production of books, documents and papers, and to examine the parties and their witnesses on oath, and to administer the oaths necessary for the purpose; and the supreme court or a judge may enforce such production or the attendance and submission to examination of parties and witnesses on the application of an arbitrator or of a party to the reference.

Arbitrators may call for books, &c., and examine parties on oath, &c.

15. An appeal lies from the award if notice of appeal and sufficient security be given within four days after the award shall be known to the party complaining of it. The salvor if appellant shall give sufficient security by bond in eighty dollars for payment of costs, and the owner if appellant by bond to answer the judgment above under a penalty equal to the sum awarded and eighty dollars for costs, or he may substitute the money by paying these amounts to the prothonotary to answer the judgment. The costs on the appeal shall be in the discretion of the court or judge, but the salvor appellant shall not be entitled to any costs if the award be not increased, nor the owner appellant if the award be not diminished, at least forty

Appeal, &c

Costs on appeal.

CHAP. 78. dollars. And the court or judge shall decide the case on its merits without regard to objections of form.

Property saved chargeable with salvage and costs.

Sale of property after award, or judgment on appeal; how regulated.

16. The property saved shall be charged with a lien in favor of the salvors for salvage and costs until satisfied in whosoever hands or howsoever possessed. After award not appealed from or judgment on appeal for salvage any of the before mentioned officers having possession of the property saved shall sell so much thereof as sufficient to pay salvage costs, if any, and expenses of sale. The property saved not being in such possession may be sold at public auction after due notice under warrant from a justice who signed the award in case there is no appeal, and under execution from the supreme court in case of judgment on appeal according to the forms in the schedule hereto.

Proceedings where no claimant.

17. If no person within thirty days shall appear to claim the goods so saved the officer or person who has charge of the same shall sell so much thereof as shall be sufficient to pay the salvage with the incidental charges incurred, or if the goods are in danger of perishing or of being lost by delay then the whole shall be sold and the proceeds thereof when sold put into the immediate possession of some principal officer of the customs or other responsible person if no such officer be present, who shall make an account thereof and sign the same; and if the goods or monies be not claimed within twelve months by the owner thereof, such of the goods as may be then on hand shall be sold by public auction and the proceeds thereof, reasonable expenses of such sale being deducted, paid into the treasury, there to remain until claimed by the owner, who upon affidavit or proof of his right thereto to the satisfaction of the judge of the supreme court, shall upon his order receive the same out of the treasury.

Dishonest persons, &c., not entitled to salvage.

18. No person guilty of dishonesty, disobedience or disorderly conduct, in relation to any shipwreck, or to the saving of or attempt to save life, vessel or property in danger from the perils of the sea, or in relation to any property saved or to the preservation thereof, shall be entitled to salvage.

Not to affect jurisdiction of supreme court or court of vice admiralty.

19. Nothing herein shall be construed to affect the jurisdiction of the supreme court or the court of vice admiralty.

SCHEDULE.

Warrant.

County of ———, ss.

To any constable of the county of ———:

Whereas, an award that has not been appealed from has been made in conformity with the chapter of the revised

statutes "of wrecks and wrecked goods," by which the CHAP. 78.
 sum of — dollars — has been awarded to A. B.
 as salvage on certain property lately wrecked and saved
 at or near —, on the coast of this province :

These are to command you to take so much as may be sufficient of such of the said saved goods as are not in possession of any of the officers named in the said chapter, in whosoever else possession the same may be found, and by sale thereof at public auction after due notice to satisfy to the said A. B. the said sum of money, and the charges of such levy and sale, and make due return of this writ with your doings thereon to me within thirty days.

In witness whereof I, being a justice of the peace and one of the arbitrators by whom the said award was made, have hereto set my hand and seal this — day of —, A. D., 18—.

Execution.

County of —, ss.

Victoria by the grace of God of the United Kingdom of Great Britain and Ireland, Queen, &c.

To the sheriff of — or any other of our sheriffs :

Whereas, on appeal from an award made in conformity with the chapter of the revised statutes "of wrecks and wrecked goods," judgment has been given in the supreme court at —, in favor of A. B. for the sum of — dollars —, as salvage on certain property lately wrecked and saved at or near —, on the coast of this province, [*and — dollars — for costs in case costs were given on appeal*] :

These are to command you to take so much as may be sufficient of such of the said saved goods as are not in possession of any of the officers named in the said act in whosoever else possession the same may be found, and of the same by sale at public auction after due notice to satisfy to the said A. B. the said sum of money [*and costs if costs are given*] and the charges of such levy and sale. Whereof fail not, and make due return of this writ with your doings thereon unto our said supreme court at — within thirty days.

Issued this — day of —, A. D., 18—, at —.

—, Attorney.

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CHAPTER 79.

OF PILOTAGE, HARBORS, AND HARBOR MASTERS.

Commissioners
of pilots for cer-
tain ports, how
appointed; then
numbered.

1. The governor in council shall appoint not less than three nor more than five commissioners of pilots for each of the ports of Halifax, Sydney, Pictou, Pugwash, Wallace, Antigonishe, Saint Mary's, Arichat, Tatamagouche, Bras d'Or and Point Brule; port of Sydney to include Glace Bay, Bridgeport, Lingan, Cow Bay, Big and Little Glace Bay. Every commissioner shall take the following oath :

Oath of office.

I [*name of commissioner*] do swear that I will act diligently, faithfully and impartially in the examination and selection of pilots for the port of [*name of port.*]

Quorum.

Three commissioners in any one of the said commissions to be a quorum.

Pilots, how ap-
pointed.

2. The commissioners shall examine and select as many pilots as they may think necessary for each of the ports in the preceding section mentioned, and shall grant certificates to such pilots in the following forms, and which shall be revocable at pleasure :

Form of certi-
ficate of appoint-
ment.

Province of Nova Scotia,

No. —, port of [*name of port.*]

We, [*names of commissioners*] commissioners appointed by law to examine and select pilots for the port of [*name of port*], certify that [*name and residence of pilot*] having been examined by us was deemed a fit person to undertake the pilotage of vessels of every description into and out of the said port, and on the — day of —, A. D. 18—, was by us licensed to act in that capacity.

(Signed) [*names of commissioners.*]

Commissioners.

Entered in the register of pilots licenses.

This license cannot be lent or transferred.

Description of [*name and residence of pilot*] No. —.

Age.	Height.	Complexion.	Color of hair and eyes.	Remarks.

Certificate to be
numbered, &c.,
and renewed
annually.

3. Every such certificate shall be numbered and registered in a book kept for that purpose, and shall be

annually renewed. Pilots shall pay two dollars for the certificate, and for every renewal thereof fifty cents, and no pilot shall lend or transfer his certificate under a penalty of twenty dollars.

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Fees.
Penalty for transfer.

4. The commissioners for their respective ports may from time to time establish bye-laws for the further regulation of pilots and for extra remuneration in cases of any extraordinary nature, and for the adjustment and decision of questions arising between masters of vessels, pilots and others, respecting pilotage, and also respecting the salvage of anchors and cables, and may annex penalties for enforcing the same, but no bye-law shall be in force until approved by the governor in council.

Commissioners may make bye-laws.

5. Every licensed pilot shall carry such flag, and have his boat marked and rigged in such manner as the commissioners shall direct, under a penalty not exceeding four dollars nor less than one dollar, and every unlicensed person carrying such flag shall forfeit forty dollars.

Regulations respecting flags and boats.

Penalty for disobeying.

6. No pilot shall be taken to sea against his will under a penalty of one hundred dollars on the master of the vessel, except when through stress of weather the same is unavoidable; in which case he shall be entitled to receive from the master or owner of the vessel twenty dollars a month for time lost, and shall also be provided with a passage home at the expense of such master or owner from the first port which the vessel shall enter where the same can be obtained.

Penalty for taking pilot to sea

7. If any licensed pilot shall be detained on board any vessel after the day of the arrival and anchoring thereof, he shall be paid one dollar a day in addition to his food and lodging, whether the detention be caused by quarantine regulations or otherwise.

Pilots detained after vessel anchored, entitled to wages

8. Any unlicensed person other than the master taking charge of any vessel as a pilot shall surrender the guidance thereof under a penalty of twenty dollars, to the first licensed pilot who shall hail her at the respective distances hereinafter mentioned from the several harbors following; viz., at Halifax, southward of Herring Cove or Thrump Cap; at Sydney, outside of Low Point and Cranberry Head; at Pictou, outside of the light house; at Antigonishe, outside the bar; at St. Mary's, one mile outside of Wedge Island; at Wallace, Pugwash, Tatamagouche and Point Brule, more than one mile from the mouth of the harbours respectively; and at Arichat, eastwardly, two miles west from Green Island, westwardly, outside of Madame Island Point.

Unlicensed pilot, when to surrender vessel to licensed pilot.

9. The master or mate of any vessel owned in this province may at any time go before the commissioners of pilots at any port in this province except Halifax for examination, as in the case of any applicant for the situation of pilot; and such commissioners shall examine any such

Masters and mates may be examined and licensed.

CHAP. 79. person whenever so offering, and if found competent to pilot his vessel into any such port, shall on payment of the usual fees grant him a certificate for that purpose, which certificate shall entitle the holder to take any such vessel under his command into and out of the port therein named free from all charge for pilotage imposed by this chapter. Masters and mates holding licenses under this section, at a distance of five miles at least from the mouth of the harbors mentioned in their respective licenses, shall hoist a white flag not less than four feet by six feet at the main topmast head with the number of his license on a dark ground in the centre as a signal that the vessel has a certificated master or mate on board; and any master carrying such flag and not authorized so to do, and any person so authorized and neglecting to hoist such flag and rejecting a regular pilot, shall forfeit twenty dollars. The following shall be the form of certificate granted under this section with the required personal description :

To hoist white flag 5 miles from harbor.

Penalty.

Form of certificate.

Province of Nova Scotia,

No. —, port of ———.

We, [*names of commissioners*] commissioners appointed by law to select pilots for the port of ———, certify that A. B. [*master or mate as the case may be*] having been examined by us, was deemed qualified to undertake the pilotage of the said vessel and of any vessel of her class under his command into and out of the said port, and on the ——— day of ———, A. D. 18—, was by us licensed to act in that capacity.

————— Commissioners.

Duly entered and not transferable.

Pilots refused entitled to certain fees.

10. If the services of the licensed pilot so hailing such vessel shall not be accepted, or the master shall afterwards take another pilot, the licensed pilot who first offered shall be paid half-pilotage by such master, except when the master or mate shall hold a license from the commissioners of that port.

Fine for not shortening sail when hailed by pilot.

11. The master of any vessel approaching any of the before mentioned harbors when hailed within a reasonable distance by a licensed pilot with his flag flying, shall shorten sail, haul to or use other means as circumstances will permit to facilitate the pilot's boarding, under a penalty of eight dollars; but the provisions of this section shall not extend to the case of a vessel whose master or mate has a certificate as pilot for that harbor and whose pilot's flag shall then be hoisted.

Proviso.

Flag to be hoisted for pilot outwards—unlicensed pilot may be taken when no other offers.

12. A master requiring a pilot to take his vessel out of any of the before mentioned harbors should if a British vessel, hoist the union jack, or if a foreign vessel such flag as is usually worn thereby at the foretop gallant mast head, and there continue the same for twelve hours during day-

light before the time of sailing, and if in the meantime no licensed pilot shall offer himself, the master may employ any person he may think fit to pilot the vessel outwards. CHAP. 79.

13. Any unlicensed pilot who shall take charge of such vessel shall surrender the guidance thereof to the first licensed pilot who shall board her within the time specified in the last section, under a penalty of twenty dollars if such vessel be bound from the port of Halifax, and twelve dollars if bound from any other port. Unlicensed pilot to surrender vessel.

14. When a licensed pilot shall have spoken or conducted a vessel inwards and shall offer his services to pilot her outwards, and shall be in attendance ready and willing so to do when such vessel is ready for sea, he shall be preferred to any other licensed pilot, and if his services be declined he shall be entitled to the proportion of pilotage prescribed by the ninth section, and if the pilot who conducted her inwards shall not have tendered his services then any licensed pilot who shall first offer himself within the time specified in the twelfth section, shall be entitled to the same proportion of pilotage if his services shall not be accepted. Pilot inwards preferred outwards if he offers.

15. The following vessels shall be exempted from pilotage: vessels owned in the province and employed in the coasting trade or fishery, except whalers, and all vessels under eighty tons burthen coming from any part of her majesty's dominions, and all her majesty's ships of war, but no vessel voluntarily taking a pilot on board shall be exempted from pilotage, nor shall any vessel not spoken by a licensed pilot at the distance from the respective harbors prescribed by the eighth section be subject thereto. Exemptions

16. Nothing in this chapter contained shall deprive any person who may act as a pilot in the absence of a licensed pilot from receiving payment for his services according to the tables of rates in the schedule. In the absence of pilot, any person may act and receive fees.

17. The sessions upon the recommendation of the grand jury may from time to time appoint and license one fit and proper person to be harbor master for any harbor within any county or district where it shall be judged by the sessions that the services of such officer may be required, and shall prescribe the duties of such harbor masters and the limits of the harbors over which their authority shall extend. Sessions may appoint harbor master.

18. The sessions shall fix and determine the amount of fees to be paid to harbor masters by vessels entering such harbors—provided they shall not exceed the fees payable at Sydney under schedule B. Vessels engaged in the coasting trade and in fishing shall be exempt from such fees, but the sessions shall have no power to establish fees in respect of any navigable river which forms the dividing line between two counties, Fees how determined.

CHAP. 79.

Bridgeport and Spanish River; appointment of harbor master.

Harbor master to continue in office, how long.

Power of sessions relative to anchorage &c., making of bye-laws.

Wharfage, how established and collected.

Buoys, &c.,

Regulations, &c.

Penalties.

Buoys, &c., how repaired, &c.

Fines.

Funds, how raised.

19. The governor in council shall appoint for each of the harbors of Bridgeport and Spanish River, in the island of Cape Breton, one fit person to be harbor master thereof.

20. Harbor masters heretofore appointed shall continue in office only until others shall be appointed in their place, or until they shall be re-appointed under the provisions of this chapter.

21. The sessions shall also make regulations for the anchorage of vessels and establish convenient and proper places for vessels to discharge their ballast at, and may make agreements with persons for erecting wharves and other conveniences for such vessels to discharge their ballast upon, and may make bye laws to compel vessels to discharge their ballast upon such wharves or at such other places as they may appoint, and for allowing masters of vessels a reasonable time for disposing of or selling such ballast, and may affix penalties not exceeding forty dollars for breach of any regulation or bye law.

22. The rates of wharfage to be paid by vessels using the wharves and other conveniences mentioned in the preceding section shall be established by the sessions, and may be recovered as a private debt.

23. The general or any special sessions shall from time to time direct as many buoys and other marks to be placed in and about the various bays and harbors in their respective counties as to them may appear necessary for the safety of the shipping and the convenient navigation of those harbors respectively, and shall make regulations for the maintenance of such buoys and marks as well as of any buoys and marks heretofore placed or erected or which may hereafter be erected, by private enterprise or at the public expense, and may authorize the harbor masters to carry the same into effect, and may affix penalties for breach of any such regulations, not to exceed twenty dollars for any one offence.

24. The sessions may appropriate such part of the fees collected by harbor masters as they see fit to the procuring, placing, erecting and keeping in repair of buoys and water marks in the harbor where such fees are collected.

25. The sessions may by regulations to that effect authorize the imposition of fines upon harbor masters for neglect of duty, not to exceed eight dollars for any one offence, to be sued for and recovered as other penalties are.

26. The sessions shall appropriate out of the district funds of Saint Mary's and out of the license funds at Antigonishe the sums necessary for the purposes of the twenty third section, which shall be repaid by a regular rate to be by them established from time to time upon the different vessels coming into the respective harbors according to the tonnage thereof, which rates shall be collected by the harbor master and paid over to the district treasurer.

27. At Saint Mary's the last preceding section shall not apply to vessels exempted from the payment of harbor dues. CHAP. 79.
Exemption at St. Mary's.

28. It shall be the duty of the harbor masters to prosecute all persons violating the regulations or bye-laws of their respective harbors. Harbor master, prosecution by &c.

29. No regulation or bye-law to be made by the sessions under this chapter shall be in force until approved by the governor in council. Regulations to be approved by governor.

30. Any person feeling aggrieved by any regulation or bye-law may complain thereof on affidavit to the supreme court in the county, and the court shall enquire into the complaint, and if it appear that the regulation or bye-law is contrary to law or oppressive, shall annul the same, and the sessions shall not afterwards make any regulation or bye-law to the same effect. Relief to parties aggrieved by application to supreme court.

31. The sessions shall from time to time appropriate out of the district funds sufficient sums to keep in repair the tow-path of the harbor of Antigonishe. Antigonishe tow path.

32. No person shall take away any stones or ballast from the bar or beach called Fish Point on the western side of the harbor of Cape Forchu, in the county of Yarmouth, under a penalty not exceeding twenty dollars nor less than twelve dollars. Fish Point Bar protected.

33. All harbor masters shall furnish copies of the regulations made by the sessions by virtue of the twenty-first section to the licensed pilots of the harbor, who shall give a copy thereof to the master or commander of every vessel which they shall take in charge. Harbor masters to furnish regulations.

34. The rates of pilotage to be received by the licensed pilots for conducting vessels into or out of the respective harbors shall be according to the table in schedule A, and any pilot exacting or attempting to exact a larger sum for his services, or taking a less sum therefor, shall for every offence forfeit eight dollars, and shall also refund any excess so received. Rates of pilotage regulated by schedule A.

35. The fees to be taken by harbor masters shall be at the rates in schedule B, according to the registered tonnage of the vessels entering the harbors, but vessels bound to Big and Little Glace Bay, Lingan, Bridgeport, Cow Bay, and from the Bras d'Or Lake and calling at Sydney, but not discharging ballast in Sydney harbor, shall not be liable to pay any harbor masters fees at the latter place. Harbor masters fees regulated by schedule B.

36. The county of Halifax is excepted from the operation of sections seventeen, eighteen, twenty, twenty-three, twenty-four and twenty-five of this chapter. Halifax excepted.

37. The governor in council may appoint commissioners to construct a public wharf in the harbor of Pictou on the public property to the eastward of the wharf of the general mining association. Commissioners for public wharf Pictou, appointment of, &c.

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Commissioners
may borrow
money.

38. The commissioners are empowered for the purposes of this chapter to borrow a sum not exceeding six thousand dollars on the security of the fund hereby created and on the pledge of the public property hereinbefore mentioned, which the commissioners are authorized to mortgage for that purpose.

Harbor dues
how collected.

39. The harbor dues now by law payable on all shipping in the port of Pictou shall after the passing of this chapter be collected by the collector of the colonial revenue in that port, who shall not clear any vessel until such harbor dues shall be first paid.

Harbor dues
how appropri-
ated.

40. The collector after deducting five per cent from the amount of harbor dues so collected shall pay the sum of four hundred dollars from such dues to the harbor master of the port of Pictou during the incumbency of the present officer as his salary, and in full of all fees and dues now payable to him, and the balance of such harbor dues shall be paid by the collector to the commissioners appointed under this chapter, to be applied by them in payment of the loan hereinbefore authorized with interest thereon and towards the construction and completion of the wharf.

Commissioners
may make
rules, &c.

41. When such wharf shall be completed the commissioners shall make rules and regulations for its care and management, and shall fix the rates of wharfage thereat and the mode of enforcing payment of the same, and for controlling and directing the disposition of vessels lying at such wharf, and such rules and regulations when approved by a general or special sessions shall have the force of law.

Commissioners
to account an-
nually.

42. The commissioners shall annually render to the general sessions of the peace for the county of Pictou at the February term thereof an account of the receipts and expenditures in connection with such wharf.

Salary of future
harbor masters
Pictou.

43. Upon the death or removal of the present harbor master of the port of Pictou the sum of three hundred dollars shall be fixed as the salary of future incumbents of that office.

SCHEDULES.

A.

RATES OF PILOTAGE.

At Halifax.

For vessels of 200 tons and under,	\$8 00
“ “ from 200 tons to 300 tons,	10 00
“ “ “ 300 “ to 400 “	12 00
“ “ of 400 tons and upwards,	14 00
On her majesty's ships under 6th rates,	8 00
“ “ “ of 4th, 5th and 6th rates,	10 00
“ “ “ of the line,	12 00

Vessels over 600 tons burthen shall be liable to pay an CHAP. 79. additional rate of fifty cents for every one hundred tons above six hundred tons.

If any vessel be boarded north of Herring Cove or Thrump Cap the rate shall be one fourth less.

Vessels under eighty tons trading from Halifax to British West Indies shall pay pilotage in proportion to their tonnage, as in this schedule.

At Sydney.

For vessels under 100 tons to Sydney town,	\$5 50
Plant's bar,	4 00
From 100 to 150 tons to Sydney town,	6 50
Plant's bar,	5 00
150 to 200 tons to Sydney town,	7 50
Plant's bar,	6 00
200 to 250 tons to Sydney town,	9 00
Plant's bar,	7 00
250 to 300 tons to Sydney town,	10 00
Plant's bar,	8 00
300 to 350 tons to Sydney town,	11 00
Plant's bar,	9 00
350 to 400 tons to Sydney town,	12 00
Plant's bar,	10 00

And for every additional 50 tons to Sydney town two dollars, and to Plant's bar one dollar.

At Pictou, Pugwash, Wallace, Antigonishe, Arichat, Tatamagouche and Point Brule.

For vessels of 80 tons and under 140 tons,	\$6 00
" " 140 " " 240 "	8 00
" " 240 " " 300 "	10 00
" " 300 " and upwards,	12 00

And on all vessels under 80 tons five cents per ton.

At Pugwash and Wallace one dollar for every one hundred tons over three hundred in addition to above rate.

At Saint Mary's.

Seventy cents for every foot of the draught of water of each vessel.

B.

HARBOR MASTERS FEES.

At Sydney and Bridgeport.

For vessels not exceeding 100 tons,	\$1 00
For vessels exceeding 100 tons and under 200 tons,	2 00
" " 200 " " 300 "	4 00
" " 300 " " 400 "	5 00

Vessels engaged in the coasting and fishing trade to be exempt from the payment of any fee.

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At Pictou, Pugwash, Wallace, Tatamagouche and Point Brule.

One cent per ton on all vessels not under 40 tons.

At Saint Mary's.

For vessels exceeding 100 tons and under 150 tons, \$1 00

For vessels exceeding 150 tons and under 250 tons, 2 00

For vessels exceeding 250 tons, 4 00

Vessels engaged in the coasting and fishing trade, and all other vessels resorting to the harbor for shelter, wood, water or provisions, and not anchoring within the bar, to be exempt from any fee.

At Antigonishe.

The fees to be established by the sessions.

CHAPTER 80.

OF PARTNERSHIPS.

When co-partnership terminated, proceedings in supreme court.

1. In cases of partnership where two partners only are concerned, and their partnership shall have terminated, either of them may file a petition in the supreme court stating the facts respecting their dealings, and praying the aid of the court. A writ of summons shall thereupon issue against the partner complained of in the usual manner.

Copy of petition and summons to be served.

2. A copy of the petition shall be served on the partner complained of at the time of the service of the summons.

Court may proceed by rule to order arbitrators.

3. On the return of the summons, if it shall be shewn to the court that the partnership consisted of two persons only, the court shall by rule direct each partner to select one fit person as an arbitrator between them.

Court may appoint arbitrators where parties neglect.

4. If the partners do not within the time specified by the court select two such persons, the court shall appoint two persons to act as arbitrators.

Arbitrators shall appoint a third person.

5. The two persons so appointed shall select one other person, and they with such person shall be arbitrators to examine and settle the partnership dealings.

Arbitrators to be sworn; form of oath.

6. The arbitrators before commencing such examination shall make before a judge or commissioner the following affidavit, which shall be filed in the prothonotary's office.

We, A. B., C. D., and E. F., do hereby solemnly swear honestly and fairly to settle the partnership accounts and

dealings of G. H. and J. L. to the best of our knowledge and ability. CHAP. 80.

Sworn at _____ before me this _____ day of _____ 18—.

G. H., J. P.

A. B.

C. D.

E. F.

7. The arbitrators shall then order the production of all books, papers and accounts, relative to the partnership dealings, and shall appoint such times and places as may appear expedient for the investigation of the partnership dealings and the examination of the partners and their witnesses. If either of the partners after due notice shall fail to attend, the arbitrators shall proceed *ex parte*.

Mode of proceeding by arbitrators prescribed.

8. Witnesses shall be summoned to attend before the arbitrators by subpœna in the usual form, and if upon being duly summoned they shall neglect to attend and give evidence they shall be liable to the same penalties as witnesses are subject to who neglect to attend the supreme court on subpœna; and the supreme court on application to them for that purpose shall enforce the same.

Power to enforce attendance of witnesses.

9. The arbitrators shall examine the partners and their witnesses upon oath to be administered by any one of the arbitrators, and shall make an award in favor of such party as they or two of them shall find justly entitled thereto, which shall be filed in the prothonotary's office, and judgment shall be entered for the amount thereof with or without costs, as directed by the arbitrators in their award, at the next term if no sufficient objection be made thereto.

Parties and witnesses to be examined; award how made; judgment how entered.

10. Execution may be issued on such judgment in the usual course, and the arbitrators or any two of them shall have power to direct the costs of the proceedings including reasonable compensation for their services to be taxed and allowed by the court, to be paid by either of the partners, and in such manner as the arbitrators or any two of them shall direct; and the court shall enforce such payment by attachment or otherwise.

Execution to issue; costs and expenses, from whom and how recoverable.

11. Neither of the partners shall after such adjudication commence any proceedings in equity touching the partnership dealings, and the judgment of the supreme court under the above provisions shall be final. In proceedings in the supreme court for the settlement of partnership dealings under this chapter, a judge at chambers may make any order therein, subject to appeal to the court in term.

Judgment when entered shall be final.

12. Two or more persons may enter into and form limited partnerships for the transaction of mercantile, mechanical or manufacturing business, upon the terms, with the rights and powers and subject to the conditions and liabilities herein prescribed. Nothing herein shall authorize any such partnership to engage in any banking

Limited partnerships, how formed.

CHAP. 80. operation or to become insurers upon any marine risk or upon loss by fire, or upon any life. Such partnerships may consist of one or more persons called general partners, who shall be responsible as general partners now are, and of one or more persons, who shall contribute in actual cash payments a specific sum as capital to the common stock, called special partners. Special partners shall not be liable for the debts of the partnership beyond the fund so contributed by them to the capital, except in cases hereafter mentioned. The general partners only shall be authorized to transact the business of the partnership and bind the same by the signature of the partnership name or otherwise.

Certificates and preliminary proceedings in case of limited partnerships.

13. Persons desirous of forming such partnerships shall before the same shall go into operation make and severally sign a certificate containing the name of the firm under which such partnership is to be conducted, the nature of the business to be transacted, the names of all the partners interested therein, distinguishing which are general and which special partners and their respective places of residence, the amount of capital which each special partner shall have contributed to the common stock, the period at which the partnership is to commence and at which it will terminate. Such certificate shall be acknowledged by the several persons signing the same before a judge of the supreme court or justice of the peace, and such acknowledgment shall be certified in writing on such certificate by the person before whom the same is made. The certificate so acknowledged and certified shall be filed in the office of the registrar of deeds, where the principal place of business of the partnership shall be situated, and shall be recorded by him at large in a book to be kept for that purpose, open to public inspection; and if the partnership shall have places of business situated in different counties or districts a transcript of the certificate and of the acknowledgment thereof, duly certified by such registrar, shall be filed and recorded in like manner in the office of the registrar of every such county or district.

Certificates to be verified under oath.

14. An affidavit of one or more of the general partners and also one or more of the special partners shall also at the same time be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock, have been actually and in good faith paid in cash; and no such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded and an affidavit filed as above directed; and if any false statement be made in such certificate or affidavit all persons interested in such partnership shall be liable as general partners.

15. The terms of every such partnership when registered shall immediately be published at least six weeks in the royal gazette and one other newspaper published in Halifax, and by handbills posted up in some public places in the township in which the business of the partnership shall be carried on. If such publication be not so made, such partnership shall be deemed general. Affidavits taken before a justice, of the publication of such notice by the printers of newspapers who shall have published the same, and by the persons who shall have posted the handbills, may be filed with the registrar with whom the certificate of the partnership shall have been filed, and shall be evidence thereof.

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Publication in newspapers and by handbills necessary.

16. Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified, acknowledged and recorded, and an affidavit of a general and special partner made and filed, and notice given in the manner herein required for its original formation; every such partnership otherwise renewed or continued shall be deemed a general partnership.

Renewals of limited partnerships; how provided for.

17. Every alteration made in the names of the partners, the nature of the business, or the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership carried on after any alteration shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the foregoing section.

Alterations in names of business to constitute the partnership general, unless in case of renewal.

18. The business of the partnership shall be conducted under a firm in the names of the general partners only, without the addition of the word company or any other general term; and any special partner whose name shall be used in such firm with his privity, shall be deemed a general partner.

Limited partnership, under what terms conducted.

19. Actions and suits at law and in equity in relation to the business of the partnership may be brought and conducted by and against the general partners, as if there were no special partners.

Actions to be in the names of the general partners.

20. No part of the sum contributed by a special partner to the capital stock shall be withdrawn by him or paid or transferred to him in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership; but a partner may annually receive lawful interest on the sum so contributed by him, if payment thereof shall not reduce the original capital; and if after the payment of such interest any profit shall remain to be divided, he may also receive his portion of such profit; but if it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall restore the amount necessary to make good his share of capital with interest.

Regulations as to capital stock and the distribution of profits.

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Special partners may advise but not transact business for the partnership.

21. A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management, but he shall not transact any business on account of the partnership, nor be employed for that purpose as agent, attorney or otherwise; and if he shall interfere contrary to these provisions he shall be deemed a general partner. General partners shall be liable to account to each other and to the special partners for their management of the concern, both in law and in equity, as other partners now are.

Fraud in special partnerships, how punished.

22. A partner guilty of any fraud in the affairs of such partnership shall be liable civilly to the party injured to the extent of the damage, and shall also be liable to an indictment for a misdemeanor, punishable by fine or imprisonment, or both, at the discretion of the court.

Preferential assignments by partners to be held void against creditors.

23. Every sale, assignment or transfer of any of the property or effects of such partnership, or of a general or special partner, made by such partnership or a general or special partner, when insolvent or in contemplation of insolvency, with intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership, and every warrant of attorney executed, and every judgment confessed, lien created, or security given by such partnership, or general or special partner, under the like circumstances and with the like intent, shall be void, as against the creditors of the partnership. A special partner who shall violate any provision of this chapter, or concur in, or assent to any such violation by the partnership, or by any individual partner, shall be liable as a general partner.

Creditors claims to be preferred to those of special partners in case of insolvency.

24. In case of the insolvency or bankruptcy of the partnership no special partner shall under any circumstances be allowed to claim as a creditor until the claims of all other creditors of the partnership are satisfied.

Dissolution, how effected.

25. No dissolution of such partnership by the acts of the parties shall take place previous to the time specified in the certificate of its formation or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the registrar's office in which the original certificate was recorded, and published once in each week for four weeks in the royal gazette, and in some other newspaper printed in Halifax, and by handbills in each of the counties where the partnership may have places of business.

CHAPTER 81.

OF FACTORS AND AGENTS.

1. Any agent entrusted with the possession of goods or the documents of title thereto shall be deemed the owner thereof, so as to render valid and binding upon all persons interested therein, any contract made with such person for the purchase of such goods, or by way of pledge, lien or security for advances upon such goods or documents, or for further or continuing advances thereon, although the person making such purchase or claiming such pledge or lien, may have had notice that the person with whom such contract is made is only an agent or factor; provided such contract be made in the ordinary course of business, and such person shall not have notice at the time of making such contract, that such agent is not authorized to sell the goods and receive the purchase money, or to pledge such goods.

Agent in possession of goods or the title thereof empowered to sell or pledge them.

2. Any contract for pledge, lien or security made by an agent entrusted with the possession of goods or the documents of title thereto, in consideration of the delivery or transfer to him of other goods or documents of title or negotiable securities on which the person delivering them has at the time a valid lien for a previous advance by virtue of some contract made with such agent, shall be as valid as if the consideration therefor had been an advance of money; but the lien required thereby shall not exceed the value at the time, of the goods, documents of title or negotiable security delivered up and exchanged.

Agent's powers in cases of exchange of goods or their titles.

3. Such contracts, loans, advances and exchanges as are made in good faith, and without notice that the agent making such contracts or agreements is acting without authority or in bad faith, although with notice of such agent not being the owner of the goods, are alone rendered valid hereby and binding upon all persons interested therein. Nothing herein shall make valid any sale, lien or pledge in respect of an antecedent debt owing from an agent to the person to whom such lien or pledge shall be given or sale made, or authorize an agent in deviating from any express orders or authority received from the owners.

Contracts made with agents in good faith to be held valid; lien for antecedent debt invalid.

4. Any document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize the holder to transfer or receive goods thereby represented, shall be considered a document of title within the meaning hereof.

Documents of title defined.

5. Any agent possessed of any such document, whether derived immediately from the owner of such goods or obtained by reason of such agent's having been possessed

Possession of documents of title possession of goods.

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of the goods or any other document of title thereto, shall be deemed to be possessed of the goods represented by such document.

Pledge upon title to be pledge upon goods.

6. Any contract pledging or giving a lien upon such document shall be deemed a pledge or lien upon the goods to which the same relates.

Agent to be considered in possession of goods, whenever they are under his control.

7. Such agent shall be deemed possessed of such goods or documents, whether the same be in his actual custody or be held by any other person subject to his control or on his behalf.

Advance to an agent possessed of goods or their title where agent not authorized to pledge, when held valid; contracts by others for agents held valid.

8. Where any advance is made to an agent possessed of goods or documents of title thereto on the faith of a contract in writing to consign, deposit, transfer or deliver such documents, if such goods or documents shall be received by the person making such advance without notice that such agent was not authorized to make such pledge or security, such advance shall be deemed to be an advance on the security of such goods or documents within the meaning hereof, though such goods or documents shall not be received by the person making the advance until a period subsequent to such advance. Any contract, whether made direct with such agent or with any person on his behalf, shall be deemed to be made with such agent.

Advances may be in money or negotiable securities.

9. Any payment, whether by money or negotiable security, shall be deemed an advance within the meaning hereof.

Possession by agent of goods or their title, evidence of agency.

10. Any agent in possession of goods or the documents of title thereto shall be deemed entrusted therewith by the owner unless the contrary be shewn in evidence.

Agent pledging goods illegally, guilty of a misdemeanor.

11. Any agent who shall unauthorized by his principal for his own benefit and in violation of good faith make any consignment, deposit, transfer or delivery of any goods or documents of title so in his possession as a pledge or security or accept any advance on the faith of a contract to make any such consignment, deposit, transfer or delivery, shall be guilty of a misdemeanor and be imprisoned in the provincial penitentiary for a term not exceeding seven nor less than two years or be fined or both as the court shall award.

Accessories also guilty of a misdemeanor.

12. Any person knowingly and wilfully assisting in making any such consignment, deposit, transfer or delivery, or accepting or procuring such advance, shall be guilty of a misdemeanor, and shall be sentenced to any of the punishments above mentioned as the court shall award.

Agent may pledge goods for advances or acceptances.

13. No agent shall be liable to prosecution for any such consignment, deposit, transfer or delivery as above mentioned for advances not greater than the amount at the time thereof due to such agent from his principal, together with the amount of any bills of exchange drawn by or on account of such principal and accepted by such agent.

14. The conviction of any such agent shall not be evidence in any suit against him, and no agent shall be liable to such conviction upon any evidence whatsoever, who shall previous to his indictment have made disclosure upon oath under compulsory process of any court in any action instituted in good faith by a party aggrieved.

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Conviction not evidence against agent; compulsory disclosures not evidence against agent.

15. Nothing herein shall affect the right of the owner to redeem such goods or documents of title so pledged before the sale thereof, upon repayment of the amount of the lien thereon or restoration of the securities in respect of which such lien exists, and on payment or satisfaction to such agent if by him required of any amount in respect of which he would be entitled to retain such goods or documents as against such owner; nor his right to recover from any person to whom such goods or documents have been pledged, or who may have a lien thereon, any proceeds of the sale thereof remaining in his hands after deducting the amount of such pledge or lien.

Owner may redeem goods pledged.

16. These provisions shall not, nor shall any conviction or judgment under them lessen, or in any way affect any remedy at law or in equity which any person aggrieved would have had against the offender if such provisions had not been made.

Proceedings under this chapter not to affect other remedies at law or equity.

CHAPTER 82.

OF BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. A bill of exchange drawn by a person residing within the province and returned protested shall, if drawn upon a person residing within the province, be subject to six per cent. per annum interest from the date of the protest to the time of payment. If drawn upon a person in any part of North America without the province it shall be subject to five per cent. damages and six per cent. per annum interest from the date of the protest to the time of payment, and if drawn upon a person in any other country it shall be subject to ten per cent damages and six per cent per annum interest from the date of the protest to the time of payment.

Damages and interest on protested bills of exchange.

2. A promissory note shall be assignable or endorsable in the same manner as an inland bill of exchange, and the payee or endorsee thereof, or the holder where the note is payable to bearer, may bring an action thereon in his own name.

Promissory notes negotiable; who may sue thereon.

3. A note in writing for a sum certain payable otherwise than in money shall be held *prima facie* to be given

Notes not payable in money presumed to be

CHAP. 83. for a valuable consideration, but shall not be negotiable. The amount of such note may be sued for and recovered as if the amount thereof were payable unconditionally in money.

for a good consideration, but not negotiable; how recovered.
No damages recoverable for non-delivery of articles mentioned in such note.

4. In an action brought upon such note the amount only payable thereunder shall be recoverable, without damages for the non-delivery of the articles enumerated therein.

CHAPTER 83.

OF CURRENCY.

Coins which are a legal tender, and their rate of value.

1. The several coins hereinafter mentioned shall be legal tenders in discharge of any present or future liability or demand at the respective rates following, that is to say:

The gold coin of the United Kingdom called a sovereign, being of full weight at the rate of one pound sterling or five dollars.

The foreign gold coin called the doubloon, being of not less weight than 415 grains each, containing not less than 360 grains of pure gold, at the rate of three pounds four shillings sterling or sixteen dollars.

The Peruvian, Mexican, Columbian and old Spanish dollars, being of the full weight of four hundred and sixteen grains, and containing not less than three hundred and seventy-three grains of pure silver, at the rate of four shillings and twopence sterling, or one dollar and four cents.

The silver coins of the United Kingdom at the following rates, to wit:

The crown at one dollar twenty-five cents.

The half crown at sixty-two and a-half cents.

The florin at fifty cents.

The shilling at twenty-five cents.

The sixpence at twelve and a-half cents.

The fourpence at eight cents.

Amount of British silver or copper which may be tendered at one time.

2. No person shall be compelled to receive at any one time a greater amount than ten dollars in British silver money, nor to a greater amount than twenty-five cents in bronze or copper money; and in any payment or tender no account shall be taken of any fractional part remaining due less than one cent.

One pound treasury notes computed at four dollars.

3. The treasury notes for twenty shillings each shall hereafter be computed at the public departments at four dollars each.

4. All judgments shall be entered in dollars and cents, CHAP. 83.
and in case of any omission or mistake in such entries
any two justices of the peace where the judgment has
been awarded by any one or more justices and a judge of
the supreme court in the case of judgments entered
therein shall have power to rectify such omission or mistake
in such terms as shall appear reasonable and just.

Judgments to
be entered in
dollars and
cents: mistakes
how corrected.

5. Executions upon judgments now subsisting or which
shall have been awarded or entered previous to the first day
of July, in the year one thousand eight hundred and sixty,
may be taken out in pounds, shillings and pence, or in the
corresponding amount of dollars and cents, at the option
of the judgment creditor; and any undesigned or acci-
dental discrepancy between the amount of the judgment
and execution may be rectified by the justice or a judge
of the court from which the execution issued on such
terms as shall appear to be reasonable and just.

Executions on
judgments
prior to 1st
July, 1860, how
taken out.

Discrepancy
how rectified.

II.—OF COPPER COINAGE.

6. The copper pence and halfpence heretofore issued
by the province shall be received at the treasury and the
holders paid the full exchangeable value thereof at the
rate of sixty pence or one hundred and twenty halfpence
to the dollar in such amounts and at such periods as the
governor in council may from time to time direct, and the
copper money so paid in shall not be re-issued but shall be
re-coined or sold, as the government may deem most ex-
pedient.

Pence and half
pence, their
value.

Not to be re-
issued.

7. The governor in council shall have power from time
to time to import and issue from the treasury copper or
bronze cents of such device and weight and in such quan-
tity as he may approve to eight thousand dollars, and half
cents to the value of two thousand dollars.

Gov. in council
may import and
issue copper
cents, &c.; ex-
tent of issue.

III.—OF DECIMAL ACCOUNTING.

8. All accounts to be rendered to the provincial govern-
ment or to any public office or department by any officer
or functionary, or by any person receiving aid from the
province or otherwise accountable to the government or
legislature thereof, shall continue to be rendered in dollars
and cents.

Public acct., to
be rendered in
dollars and
cents.

10. The holder of any undertaking or order for the
payment of money, which is designed to be, and to serve
the like purpose of notes or bills of bankers, or for circu-
lating currency, whether payable to a real or fictitious
person or to the bearer thereof, or purporting to be trans-
ferable by endorsement or delivery, and whether made
payable in gold or silver or otherwise, may demand the
full amount thereof in gold or silver money from the party
by whom the same is payable; and in default of such

Bankers notes
and bills to be
payable in gold
or silver, and
twelve per cent
interest after
demand.

CHAP. 84. payment the party shall pay to such holder interest at the rate of twelve per cent per annum upon the amount thereof from the day of such demand and refusal.

Such notes to be transferable by delivery and recoverable by holder.

11. Every such undertaking shall be transferable by delivery only without endorsement or assignment; and every holder of such undertaking may recover the amount therein expressed as if the same were a promissory note made absolutely payable in gold or silver money.

Holder may tender such notes to maker as a payment.

12. The holder of any such order or undertaking being indebted to the person being the maker thereof, may tender the same to such maker in or towards payment of such debt for the full amount therein expressed.

Bank notes not issuable under twenty dollars; to be payable in specie.

13. Any person issuing as circulating currency any promissory note, bank note or bill for a less sum than twenty dollars, shall for every such offence forfeit forty dollars; and any person issuing as circulating currency any promissory note, bank note or bill, expressed to be payable otherwise than in gold or silver money, shall for every such offence forfeit a like sum.

Penalty.

Treasury notes excepted; also, orders, bank cheques and promissory notes, not intended as currency.

14. The foregoing provisions shall not extend to treasury notes of this province nor to any undertaking or order not designed for circulation as currency but *bona fide* drawn by any person upon his banker or any other person, nor shall they prevent any person indebted in a sum less than twenty dollars from making to his creditor a promissory note or undertaking to pay such sum.

CHAPTER 84.

OF MILLS AND MILLERS.

Tolls for grinding wheat, &c., regulated.

1. The tolls to be taken by every miller for grinding wheat, rye, barley, buckwheat or indian corn, or for grinding oats which are not kiln dried, shelled and sifted, shall not exceed one sixteenth part, nor the tolls for kiln drying, shelling, grinding and sifting oats one eighth part of the whole quantity brought to the mill to be ground.

Tolls for hulling barley, bolting flour, &c.

2. Every miller shall receive for hulling barley one sixth of the quantity, and for bolting or sifting flour or meal ground at his mill one pint out of each bushel of grain or corn so ground.

Quantity of grain, how ascertained.

3. The quantity of grain or corn to be ground shall be ascertained by a sealed measure.

Fine for taking or demanding illegal toll.

4. A miller demanding or taking any larger toll than is hereby allowed shall forfeit eight dollars for every such offence, and shall pay the owner the full value of the grain or meal taken beyond the prescribed toll.

5. A miller refusing to grind any grain or corn, or to hull any barley which shall be in good order, or to bolt or sift any flour or meal, having the requisite machinery therefor, shall forfeit eight dollars for every offence, but the proprietor or manager of any steam mill may refuse to receive or to grind any grain or corn or to hull any barley, and shall not be subject to the above penalty therefor unless he shall first receive and afterwards refuse to grind such grain or corn or to hull such barley.

CHAP. 85.

Fine for refusing to grind, &c.; steam mills when excepted.

6. Every miller shall have in his mill, erected in a convenient place, properly fitted and provided, a good and sufficient beam and scales with proper legal weights, for the use of persons requiring grain or corn to be ground at such mill, and in default shall for every such offence forfeit twenty dollars.

Millers to keep scales and weights in mills under penalty of twenty dollars.

CHAPTER 85.

*Amended 1868.
Cap 10*

OF THE REGULATION AND INSPECTION OF PROVISIONS, LUMBER, FUEL AND OTHER MERCHANDIZE.

1. The general sessions or a special sessions in each county or district may appoint such inspectors of pickled fish therein as they may deem necessary to carry out the provisions of this chapter; and such inspectors shall give bonds in the sum of four hundred dollars each and shall be sworn before the custos to the faithful discharge of the duties which devolve upon them hereunder.

General sessions may appoint inspectors.

Bonds.

To be sworn.

2. Any person who shall inspect or brand any cask of pickled fish as an inspector without being duly appointed and sworn, shall be liable to a penalty of twenty dollars for every cask inspected or branded by him.

Penalty on inspectors not duly appointed.

PACKAGES.

3. All tierces, barrels and half-barrels in which pickled fish is intended to be packed shall be made of sound, well seasoned split or sawed staves, free from sap, and in no case to be of hemlock; and the heading shall be of hardwood, pine or spruce, free from sap, and planed on the outsides, and shall be at least three quarters of an inch in thickness; the staves shall be five-eighths of an inch in thickness; staves for salmon and mackerel barrels shall be twenty-eight inches in length and the heads between the chimes seventeen inches. Staves for barrels for herring and alewives twenty-seven inches in length and the heads between the chimes shall be sixteen inches. The bung

Dimensions of barrels, &c.; of what materials to be made.

CHAP. 85. stave of all packages shall be of hardwood, and all casks shall be hooped one-third of their whole length from each chime, with sound, good hoops of not less than one inch in width, at the large end for all tierces and barrels, and in no case to be of alder.

Package to be
branded by the
maker.

The makers of all tierces, barrels and half-barrels, shall brand the initials of their christian names and their whole surname at or near the bung stave under a penalty of fifty cents for every package not so branded.

4. The qualities of pickled fish shall be classed as follows:

SALMON.

Salmon, No. 1. Salmon to be branded "No. 1" shall consist of the largest, best and fattest kind, being well split, the blood being well washed out before being salted, well cured, in the best condition, and in every respect free from taint, rust, or damage of any kind.

No. 2. Those branded "No. 2" shall comprehend the best salmon that remain after the selection of the first quality, and shall be good sound fish, well split and cured, in good condition, and in every respect free from taint, rust or damage of any kind.

No. 3. Those to be branded "No. 3" shall consist of those that remain after the selection of the two first qualities, but must be good fish, and in every respect free from taint or rust.

MACKEREL.

Mackarel, No. 1. Mackerel to be branded "No. 1" shall consist of the best and fattest mackerel, being well split, having the blood well washed out before being salted, well cured, in the best condition, and free from taint, rust or damage of any kind; and shall measure not less than fourteen inches from the extremity of the head to the crotch, or fork of the tail.

No. 2 large. Those to be branded "No. 2 large" shall comprehend the best mackerel that remain after the selection of the first quality, and shall be properly split and washed, well cured, and in every respect free from taint, rust or damage of any kind, and shall measure not less than thirteen inches from the extremity of the head to the crotch of the tail. All those of the same kind and quality measuring from eleven to thirteen inches as above described shall be branded "No. 2."

No. 3 large. Those to be branded "No. 3 large" shall consist of good sound large mackerel, properly washed, well cured, and free from taint, rust or damage of any kind, and shall measure fourteen inches and upwards from the extremity of the head to the crotch of the tail. All those that measure from eleven to fourteen inches shall be branded "No. 3."

All mackerel under eleven inches in length, of good sound quality and free from taint, rust or damage of any kind, shall be branded with the word "small," in place of a number. CHAP. 85.
"Small."

All short, sunburt or ragged mackerel of whatever class and not otherwise defective shall be branded "No. 4."

All sour mackerel of whatever class shall be branded with the word "sour," in addition to other brands. "Sour."

HERRING AND ALEWIVES.

Herring or alewives to be branded "No. 1" shall consist of the largest and best fish; and those to be branded "No. 2" shall be the smaller and inferior description. Both qualities shall be well cleansed and cured and in every respect free from taint, rust or damage of any kind. Herring, No. 1.
No. 2.

All ripped herring shall be branded with the word "split," in addition to other brands. "Split."

All herring that are not gibbed shall be branded with the word "gross," in addition to other brands. "Gross."

All rusty fish of whatever kind or class shall be branded with the word "rusty," in addition to other brands. "Rusty."

All fish known as pickled fish that may be cured in bulk and afterwards packed in barrels, shall be branded with the name of the place where such fish were taken and cured, as "Newfoundland," "Labrador," "Magdalen Islands," or as the case may be, in addition to other brands. Fish cured in
"bulk."

Tainted or damaged fish of any class or kind shall on no account whatever be permitted to pass inspection. Tainted fish.

5. All inspected pickled fish, whether ripped or otherwise, shall have been well struck or salted in the first instance, and the qualities shall be those prescribed in the sixth clause; the fish shall be very carefully sorted and classed according to their respective numbers and qualities. Each cask shall contain fish of the same kind and quality, properly packed in separate layers, and on every layer of fish so packed in the cask, a sufficient quantity of suitable salt shall be regularly placed; the quantity to be not less than half a bushel for a barrel, and in like proportion for other packages at the discretion of the inspector. After the cask shall have been properly packed and headed it shall be filled with clean pickle, sufficiently strong to float a fish of the kind packed. Herring and alewives, and all mackerel except No. 1 and No. 2, shall be packed with coarse salt. Fish to be well
salted.

How packed,
&c.

Casks to be
filled up with
pickle.

6. Casks shall contain the quantity of fish hereinafter prescribed for each cask respectively. The fish shall be carefully weighed, perfectly clear of the salt and pickle, that is to say: Fish to be
weighed.

A tierce three hundred pounds. Tierce.

A barrel two hundred pounds. Barrel.

An half barrel one hundred pounds. Half barrel.

CHAP. 85.

What to be
branded on
cask.

7. There shall be branded on the head of every cask of pickled fish in plain legible characters, after the same has been inspected, classed, weighed and packed, in accordance with this chapter, the description of the fish, the number and the quality, the weight contained in the package, the initials of the christian name and the whole surname of the inspector by whom the fish was actually inspected, the name of the place where he acts as inspector, the abridged name of the county, the letters "N. S." for Nova Scotia, and the year of the inspection.

Fees.

8. Every inspector who shall actually inspect and brand any cask or package of pickled fish, or any cask or package intended to contain pickled fish, in accordance with all the provisions of this chapter, shall be entitled to the following fees from the owner or person who employed him :

For every tierce twelve and a half cents.

For every barrel eight and a half cents.

For every half barrel three and a half cents.

And for all casks or packages intended to contain pickled fish, two cents ; to be paid by the owner or person who employed him.

Inspecting, &c.,
to be done in
sight of inspec-
tor.

9. The inspecting, classing, weighing, packing, and branding any cask or casks of pickled fish shall be done in the immediate presence and sight of an inspector, and any inspector suffering the same to be done except in his immediate presence and sight, or who shall lend or suffer his branding irons to be taken to be used, shall be liable to a penalty of forty dollars for every offence.

Penalty.

Ré-packing.

10. In every case when it may become necessary in consequence of any casualty to re-pack a cask of inspected fish, such re-packing shall only be done by or in the presence of an inspector if one be within five miles of the place of repacking, and any other person attempting to re-pack or brand any such cask of pickled fish shall be liable to a penalty of twenty dollars for every offence.

Penalty.

Inspector, &c.,
must act.

11. Every inspector shall be obliged without any unnecessary delay to inspect all pickled fish under the provisions of this chapter when called upon so to do, under a penalty of twenty dollars for every default, provided that no inspector shall be obliged to proceed more than five miles from his place of residence for that purpose, nor shall any inspector be compelled to act unless at least ten packages shall be ready for inspection. He shall likewise inspect all tierces, barrels and half barrels intended to contain the pickled fish that he is called upon to inspect, and condemn all such casks or packages as shall not be made conformable to the provisions of this chapter.

Proviso.

Penalty for in-
termixing, shif-
ting, &c.

12. Whoever shall intermix, take out or shift any inspected pickled fish in or from any package that has been inspected, packed and branded, or shall alter any brand on

any cask of pickled fish after it has been branded by a legally appointed inspector, or shall re-fill any package previously branded, or shift any head in any package after it has been inspected and branded, shall be liable to a penalty of twenty dollars for every cask. CHAP. 85.

13. All actions for the recovery of penalties or damages on account of the misconduct or neglect of any inspector, may be prosecuted against such inspector either upon the bond given by him or by action for damages. Penalties, &c.,
how prosecuted.

14. All pecuniary penalties imposed by this chapter may be recovered by and in the name of any person who shall sue for the same, and such penalties when recovered shall be for the use and benefit of the party suing. Penalties, how
recovered, &c.

15. Actions against inspectors or their deputies under this chapter shall be brought in the county where the offence shall have been committed, and not elsewhere. Actions against
inspectors,
where brought.

SMOKED HERRINGS.

16. The sessions in every county shall appoint inspectors of smoked herrings in all places where they may be required, and shall take a bond from all persons appointed, in the sum of eighty dollars, with two sureties, for the faithful discharge of their duty. Appointment of
inspectors.

17. All smoked herrings intended for sale or exportation shall be culled, classed, weighed and branded, by a legally appointed inspector, or in his immediate presence and sight. Must be weighed
in inspectors
sight.

18. There shall be two qualities of smoked herrings—those to be branded “No. 1,” shall comprehend the fattest and best fish, and those to be branded “No. 2,” the poorer, smaller and inferior fish. No. 1.
No. 2.

Both qualities shall be well cured and smoked, free from taint, and not burnt or scorched.

All tainted, burnt or scorched fish, and fish badly smoked shall be considered *refuse*, and may be branded as such without any other character. And every box of smoked herrings shall contain twenty pounds of the qualities described. “Refuse.”
Weight of box.

19. Boxes intended to contain smoked herrings shall be made of well seasoned boards, the sides, top and bottom to be not less than half an inch in thickness, and the ends not less than three quarters of an inch in thickness; and they shall measure on the inside at least eighteen inches in length, nine inches in breadth, and eight inches in depth; they shall be well nailed, and the tops or covers shall be planed or shaved. Materials of
boxes, dimen-
sions, &c.

20. Boxes of smoked herrings after having been carefully culled, classed, weighed and packed, shall be branded on the top or cover with the name of the inspector, his place of residence, the quality of the fish, and the weight contained in the box. How branded.

21. The fees for culling, classing, weighing, packing Fees.

CHAP. 85. and branding, shall be five cents per box; and for culling, classing, weighing and branding only, shall be three and one half cents per box.

Penalty on inspector not appointed. 22. Any person acting as an inspector of smoked herrings, not legally appointed, shall forfeit twenty dollars for every offence.

Penalty for intermixing, &c. 23. Any person counterfeiting or using the brands of an inspector, or being accessory thereto, or who shall shift, intermix or take out any smoked herrings, or shall alter any brand on any box of smoked herrings that has been packed and branded, shall be punished with fine or imprisonment; at the discretion of the court, before which he may be convicted.

Penalty for exporting fish not branded. 24. Any person exporting or attempting to export or selling or offering for sale any box or boxes of smoked herrings without being duly inspected and branded in accordance with the provisions of this chapter, shall forfeit the value thereof, but no such forfeiture shall exceed forty dollars for any one offence.

Penalty for false inspection 25. Any inspector who shall inspect and brand any box of smoked herrings, not in accordance with the provisions of this chapter, shall be liable to a penalty of fifty cents for every box so inspected and branded.

FISH OIL.

Casks fish oil, how branded. 26. On every cask of fish oil guaged shall be branded or cut with a double iron, the initial letters of the christian name of the gauger, and the whole of his surname, and the word "cod," "dog," "whale," "seal," or whatever word will express the description of the contents.

Gauger's duty and fees. 27. No gauger shall be compelled to leave his residence to guage a less quantity than five barrels; and the fees for guaging shall be at the rate of twenty cents a puncheon, or fifteen cents a barrel.

Fine upon gauger for misconduct. 28. Any gauger who shall falsely brand any cask of fish oil, shall for every gallon, forfeit ten cents.

Fine for acting as a gauger without authority. 29. If any person shall act as a public gauger of fish oil without having been duly appointed and sworn, he shall for every offence forfeit twenty dollars.

SALTED BEEF AND PORK.

Qualities and description of inspected beef and pork. 30. There shall be three qualities of salted beef and pork respectively, which shall be designated "mess," "prime" and "cargo." "Mess beef" shall comprehend all large and fat beef of the first quality, without hocks, shins or neck pieces; "prime beef," good and well fattened beef of the next quality, each barrel containing one round at least and not more than two hocks or shins and half the neck; and "cargo beef" inferior quality beef, each barrel containing not more than three hocks or shins and half

the neck. "Mess pork" shall consist of the rib pieces of good fat hogs only; "prime pork" of the next best pieces, with no legs, and not more than three shoulders and twenty pounds of head in any one barrel; and "cargo pork" shall be fat and merchantable, with no legs, and not more than four shoulders and twenty-five pounds of head in a barrel. The snouts above the tusks and the ears shall be cut off all the heads and the brains and bloody grizzle taken out. All pieces of pork shall as nearly as possible be cut square, and mess pork as near as may be to the weight of four pounds; and no piece of prime or cargo pork shall exceed twelve or be less than four pounds in weight. CHAP. 85.

31. The staves and heading of the casks in which salted beef and pork respectively shall be packed for exportation, shall be made of good seasoned hardwood, free from sap and every other defect; and each cask shall be secured with two iron hoops and fourteen ash, oak, yellow birch, hickory, or maple hoops; and the casks to contain beef or pork for home consumption shall be made either of the above descriptions of hard wood, or of good seasoned spruce with spruce or hardwood heading, free from every defect, with hoops similar in number and quality to those required for casks intended for exportation, with the exception of the two iron hoops for which wooden ones may be substituted; the heads in all cases to be made of good thick stuff, and the hoops to be well set and drove. The dimensions of pork and beef barrels shall be seventeen inches between the chimes and twenty-eight inches long, and shall not guage less than twenty-seven nor more than thirty gallons. Half barrels either for beef or pork shall contain not less than fourteen nor more than fifteen gallons.

Casks for packing salted beef and pork; their quality and dimensions.

32. Every barrel shall contain two hundred pounds nett weight of beef or pork, not less than three ounces of saltpetre, and if pork, half a bushel of salt, and if beef, a peck and a half of salt; the salt to be Turk's Island, Bahama Island, or Saint Ube's; and every half barrel shall contain one half the quantity and quality of beef or pork, salt and saltpetre, above prescribed for each barrel respectively.

Casks to contain a certain weight of meat and salt of certain description.

33. The inspectors and re-packers shall within the districts assigned to them respectively examine and sort all salted beef and pork intended for exportation or sale, and see that the same and the casks in which they are packed are of the qualities and dimensions hereinbefore in that behalf prescribed, and shall brand on one of the heads of each barrel the figures "200," and "100" on each half barrel, and the words "mess," "prime" or "cargo" "beef" or "pork," as the case may be, the name of the inspector, and the place of inspection or re-packing, at full length, in plain legible characters; and

Duty of inspectors and repackers; mode of branding.

CHAP. 85. they shall carefully secure their branding irons, so as to put it out of the power of any person to use the same.

Beef and pork, how prepared for repacking. 34. No beef or pork shall be repacked until it has laid in salt fourteen days.

Fees of inspectors. 35. The inspectors shall receive for inspecting or re-packing each barrel of beef or pork twenty cents; for each half barrel twelve and one half cents; for putting on each hoop wanting, three and one half cents; and for flagging, nailing, pegging and pickling each barrel, twelve and one half cents, and for each half barrel eight and one half cents; the owner to supply the salt.

Fine for misconduct. 36. Any inspector or re-packer who shall inspect, re-pack or brand any cask of salted beef or pork contrary to or shall in any way offend against these provisions, shall forfeit eight dollars for every offence.

Fines for exporting uninspected beef or pork. 37. All salted beef or pork, packed or re-packed, whether for home consumption or exportation, shall be inspected, re-packed and branded in the manner hereinbefore prescribed; and any person who shall ship for exportation any salted beef or pork without being so inspected shall forfeit eight dollars for each cask; and any master having the same on board his vessel shall forfeit four dollars for every cask.

Proceedings where there is suspicion that uninspected beef or pork has been shipped. 38. If any inspector or re-packer shall have reason to suspect that any salted beef or pork is shipped contrary to the last section, he may apply to a justice of the peace, assigning under oath the causes of his suspicion; and the justice, if he shall think the suspicion well grounded, shall issue his warrant to the inspector to board and search the vessel; and if any salted beef or pork not inspected, re-packed or branded, shall be found therein laden, any justice of the peace, upon the application on oath of such inspector, shall direct his warrant to the sheriff or to any constable of the county, commanding him to enter the vessel and cause the same to be re-landed and delivered to the owner, upon his paying all expenses of the warrant, search and re-landing. Any person obstructing the search or re-landing shall forfeit two hundred dollars.

Forfeiture for shifting or intermixing re-packed beef or pork. 39. If any person shall take out of the cask or shift or intermix any salted beef or pork which has been duly re-packed and branded, and shall load on board any vessel or sell the same, he shall forfeit two hundred dollars.

INSPECTION OF FRESH BEEF.

Fresh beef; regulation for weighing, &c. 40. Fresh beef slaughtered in the province and sold by weight at a stated price shall if required be inspected and weighed by an officer appointed for the purpose, to be named by the seller, who shall at his discretion make a fair allowance to the purchaser for any loss he may sustain by the same being weighed within four hours after the

slaughter, or for any bruises found thereon, or to the seller, by making compensation to him for what may have been improperly trimmed off or reduced in weight by the purchaser. The hide and tallow shall if the seller so require be weighed with the carcase and paid for by the purchaser as for the like quantity of beef; and it shall be imperative upon the purchaser to take such hide and tallow, under a penalty of four dollars for each carcase.

41. Nothing in the preceding section contained shall prevent any person from selling or purchasing live cattle by weight, nor shall extend to any contract with the government or any public department.

Live cattle and government contracts excepted from the operation of last section.

42. Where no more than two carcasses shall be inspected and weighed at one time, the officer shall receive fifteen cents for each; and where three or more, ten cents for each.

Officers' fees.

43. The officers for every neglect of duty shall respectively forfeit not less than eight nor more than twenty dollars.

Fine upon officers for neglect of duty.

BREAD.

44. All bread intended for sale shall be marked in Roman characters with the initial letters of the grain of the flower or meal of which it is made, and with the initials of the christian and surname of the baker, and shall be also marked with the weight thereof.

Bread for sale, how marked.

45. All bread intended for sale shall be made to the following weights respectively, and no other, viz: four pounds, two pounds, one pound, and eight ounces.

Weight of loaves.

46. No person shall sell any bread that shall not be marked in accordance with the forty fourth section; and any person violating the same, by having in his possession, selling or offering for sale any bread not duly marked, shall forfeit for every loaf not duly marked, not less than twenty cents nor more than one dollar.

Fine for selling unmarked bread.

47. Every person selling bread shall keep a pair of scales and weights, in order that the purchasers of such bread may if they require, have the same weighed.

Persons selling bread shall keep scales and weights.

48. Any justice of the peace or constable authorized by the warrant of a justice, or the clerk of the market, may visit the premises wherein bread is made or sold, and may search for and weigh all bread therein; and if any bread be found therein under the prescribed weight or not marked as herein directed, the same shall be seized, and on proof of the fact before a justice, it shall be disposed of to poor persons under the direction of such justice.

Justices or constables authorized may seize bread unmarked or short of weight, as forfeited.

49. If any person shall obstruct or oppose the officer in making such search or seizure, he shall forfeit not less than four dollars nor more than eight dollars.

Fine for obstructing officer.

50. Any person selling bread deficient in weight, and the offence being proved by the same being weighed within

Fine for selling bread short of weight.

CHAP. 85. twenty-four hours after baking, before a justice, shall unless the deficiency appear to have been occasioned by some unavoidable accident, forfeit not less than ten cents, nor more than fifty cents for every half ounce deficient.

Fine for servants or journeymen offending.

51. If any servant or journeyman in the employ of a baker shall offend against these provisions, he shall forfeit not less than four nor more than eight dollars, and in default of payment he shall be imprisoned not less than seven nor more than fourteen days.

Baker may be relieved from fines incurred by the wilful misconduct of servants.

52. If any baker shall pay any of the foregoing penalties in consequence of the wilful neglect or default of his servant or journeyman, any justice of the peace, upon the application of such baker, may cause the offender to be brought before him and order him to pay a reasonable sum by way of recompense, and if he shall not comply with such order may commit him to jail for a period not exceeding a month.

Loaves made to order, or weighing less than half a pound, excepted.

53. These provisions shall not apply to loaves made to order and rasped by the desire of the customer, nor to loaves or cakes sold, weighing less than half a pound.

Limitation of suits.

54. Prosecutions for breach of any such provisions shall be commenced within three days after the offence committed.

GRAIN AND CORN.

Weight of grain and corn, per bushel.

55. Merchantable grain and corn shall be of the following weight per bushel, viz: wheat sixty pounds; foreign barley, fifty-two pounds, and if the produce of the province, forty-eight pounds; rye, fifty-six pounds; indian corn, fifty-eight pounds; oats, thirty-four pounds; and malt, thirty-nine pounds.

Wheat and barley not home produced, to be sold by weight.

56. All wheat and barley not the produce of the province shall be sold by weight, and the number of pounds by the last section established as the standard weight of a bushel thereof respectively shall be deemed to represent a bushel of such wheat or barley.

Grain sold on board, to be delivered from a vessel, to be weighed and measured by a sworn measurer.

57. All grain and corn sold on board of and intended to be delivered from any vessel, shall be weighed and measured by a sworn measurer; but grain or corn may be exported or be sold in a store without his intervention, unless the purchaser require to have the same weighed or measured by such officer.

Heated or unmarketable grain not to be taken account of, unless by request of purchaser.

58. If the measurer shall find the same heated, or in any other respect unmarketable, he shall inform the purchaser, and shall not take any account thereof unless at the request of the purchaser.

Fees of measurers; their measures.

59. The grain measurers shall receive from the seller for inspecting and weighing or measuring grain or corn, at the rate of fifty cents for every hundred bushels. The measures used by them shall in all cases be struck with a straight stick rounded at the edges,

60. If any person shall sell or deliver any grain or corn in violation of these provisions, he shall forfeit ten cents for every bushel of such grain or corn. CHAP. 85.

Fines for violation of provisions.

61. If any grain measurer shall undertake to attend the weighing and measuring of grain or corn from more than one vessel at the same time, or shall be guilty of any neglect or dereliction of his duty, he shall forfeit a sum not exceeding twenty dollars for each offence.

Fine upon measurers for misconduct.

FLOUR AND MEAL.

62. All barrels and half barrels of flour and meal brought into or offered for sale in the city of Halifax, or in any of the counties, townships or districts for which weighers of flour and meal may hereafter be appointed, shall before being used or offered for sale or carried out of the city or any such county, township or district, be weighed by one of the weighers of flour and meal, and each barrel shall contain not less than one hundred and ninety-six pounds nett weight, and each half barrel not less than ninety-eight pounds nett weight.

Flour to be weighed; weight of barrels, &c.

63. Every barrel or half barrel found to be of full weight shall be branded by the weigher with the initials of his christian name and his surname at full length, and with figures denoting the nett weight. No barrel or half barrel deficient in weight shall be branded until the importer or owner shall have the deficiency supplied.

Barrels, &c., how branded.

64. Every person sending from or offering for sale within the city of Halifax or within any such county, township or district, any barrel or half barrel of flour or meal deficient in weight or without its having been previously branded, shall be liable to a penalty not exceeding four dollars for each barrel, two dollars for each half barrel, and ten cents for every pound weight deficient.

Fine for selling barrels, &c., light of weight, or not branded.

65. Weighers shall receive for weighing every barrel two cents and every half barrel one cent from the person employing them.

Weighers' fees.

66. When any barrel or half barrel shall after having been branded be emptied of its contents, the brands thereon shall be erased before the same shall be refilled for the purpose of exportation or sale, and any person refilling any such barrel or half barrel without first erasing the brands, shall be liable to a penalty not exceeding one dollar for every barrel and fifty cents for every half barrel.

Fine for improperly filling empty branded barrels, &c.

67. To prevent any damage or loss sustained in unpacking flour or meal to ascertain the tare of the barrels or half barrels, the weigher may affix a tare according to his judgment without unpacking or weighing the same, which judgment shall be final unless disputed by the buyer or seller, in which case the barrel or half barrel may be unpacked, but the reasonable expense attending the same shall be paid by the party complaining.

Tare of barrels, &c., how ascertained.

CHAP. 85.

Fine upon
weighers for
misconduct.

Home manu-
factured flour
excepted, if
weighed and
branded by the
proprietor of
the mills.

Wheat flour
warehoused for
exportation ex-
cepted.

Weighers, how
appointed;
their returns.

Vegetables how
to be sold; stan-
dard weight, &c.

Tare on sugar,
how ascer-
tained.

Fine for not al-
lowing tare on
sale.

68. If any weigher shall brand any barrel or half barrel contrary to these provisions he shall be liable to a penalty of eight dollars for every barrel and four dollars for every half barrel, and every weigher offending in any other manner shall be liable to a penalty of forty dollars.

69. These provisions shall not extend to the weighing of barrels or packages of flour and meal manufactured within the province if branded with the name of the proprietor of the mill where manufactured, and which shall have the nett weight thereof distinctly branded thereon, unless the purchaser shall require the same to be weighed by the public weigher; and if any such flour or meal shall be sold without being so marked, or the barrel or package so branded shall not contain the full weight branded thereon, the proprietor of such mill shall be liable to a penalty not exceeding four dollars for each barrel and two dollars for each half barrel, and ten cents for every pound weight deficient.

70. These provisions shall not extend to wheaten flour which may be warehoused and shall be taken therefrom for exportation.

71. The sessions may upon the recommendation of the grand jury annually appoint weighers of flour and meal for their respective counties or for particular townships or districts therein, in manner as township officers are appointed, who when sworn shall have the same authority and perform the same duty as the weighers of flour and meal in the city of Halifax, and every weigher shall make a quarterly return to the provincial secretary's office of all flour and meal weighed by him, to be made up to the last days of March, June, September and December, and delivered within one month thereafter.

72. Potatoes and all edible roots shall hereafter be sold by weight, and the standard bushel thereof shall be as follows: potatoes and turnips sixty pounds; all other edible roots forty pounds.

TARE ON SUGAR.

73. The tare to be allowed on the sale of brown or raw sugar shall upon every barrel be twenty-two pounds, and upon every hogshead or other package of the weight of eighteen hundred pounds or less, twelve pounds for every hundred pounds of gross weight, and upon every hogshead or other package of such sugar above the weight of eighteen hundred pounds, the tare shall be ten pounds for every hundred pounds of gross weight.

74. Any person who shall not allow the full tare as herein prescribed shall forfeit fifty cents for every hundred weight of the sugar upon which such full tare shall not be allowed.

COAL AND SALT.

CHAP. 85.

75. Coals sold from shipboard by retail shall be sold by the ton weight of two thousand two hundred and forty pounds avoirdupois and its subdivisions. Coals, how sold.

76. All coal or salt sold from shipboard by retail in this province shall be weighed or measured by officers appointed for the purpose. Coal and salt to be measured.

77. If such coal or salt shall be delivered to any truckman or other person without having been weighed or measured according to the two last sections the seller shall forfeit the same or the value thereof to the use of the poor. Liable to forfeiture if delivered without being measured.

78. The measurers of coal shall receive from the seller eight and one half cents for every ton; and measurers of salt shall receive three and one half cents for every hogshead which they shall respectively measure. Fees of measurers.

79. If any measurer of coal or salt shall undertake to attend the admeasurement of coal or salt from more than one vessel at the same time, he shall forfeit a sum not exceeding eight dollars for each offence; and for any neglect or misconduct other than the offence last mentioned a sum not exceeding twelve dollars. Fine on measurers for misconduct.

80. Every person who shall wilfully sell or dispose of any coal within this province under any name or designation other than that of the mine or locality from whence the same may have been obtained, shall forfeit a penalty of forty dollars. Penalty for misrepresentation of kind of coal.

81. Any shipmaster or other person bringing coal to any port in this province from any mine therein, shall exhibit on demand thereof to any person desirous of purchasing coal a certificate from the proprietor or shipping officer of the mine from whence such coal has been shipped, stating the name or locality or other known designation of such coal and the date of shipment thereof, which certificate the proprietor or shipping officer is hereby required to give to the shipmaster at the time of the shipment of such coal. Shipmaster shall exhibit certificate of proprietor when requested.

82. Any proprietor or shipping officer refusing to give such certificate or giving a false certificate, or any shipmaster or seller of coal refusing to exhibit such certificate on demand, or exhibiting a false certificate, shall respectively forfeit twenty dollars. Proprietor, &c., giving false certificate; penalty.

83. Every such certificate shall on the discharge of the cargo of coal to which it refers be delivered up by the holder thereof to the collector of customs of the port, to be placed upon the file in his office. Certificate delivered to collector.

SOLE LEATHER.

84. Every inspector of sole leather shall provide himself with proper scales and weights, and shall weigh every Inspectors of sole leather shall keep

CHAP. 85. side of sole leather presented to him for inspection, and shall impress thereon—

_____ scales and weights; their duty on inspection: marks and numbers to be impressed.

- 1°. His own surname and the name of the place for which he is inspector.
- 2°. The word "best" if the leather be manufactured of good hides and in the best manner.
- 3°. The word "good" if the leather be manufactured of good hides in a merchantable manner.
- 4°. The word "damaged" if the leather be manufactured of damaged hides in a merchantable manner.
- 5°. The word "bad" if the leather be not of one of the qualities above mentioned.
- 6°. The weight of the side shall also be distinctly impressed thereon, either in figures or in words at length.

Deductions from weight when leather is not dry; inspector's fees.

85. The inspector shall make such a deduction as he shall think reasonable from the actual weight of every side of sole leather inspected by him which shall not be perfectly dry, and he shall receive five cents for every side of sole leather which he shall inspect, weigh and stamp.

Fine for offering for sale unstamped sole leather.

86. If any person shall offer for sale any sole leather which shall not have been duly stamped he shall forfeit a sum not exceeding one dollar for every side.

Fine for violation of duty by inspector.

87. If any inspector shall violate his duty he shall forfeit a sum not exceeding four dollars for every offence.

HAY.

Hay, how weighed; weighers' fees.

88. Hay may be weighed in scales or by steel-yards duly stamped by the clerk of the market, and weighers shall receive at the rate of two cents for every hundred weight of hay weighed by them, and seven cents for every mile they shall be required to travel if the distance shall exceed one mile.

CORDWOOD.

Cordwood for retail; its quality and dimensions.

89. Every stick of cordwood intended for retail shall measure four feet in length, accounting half the scarf, and be sound hardwood, and every cord shall be of the full length of eight feet and four feet high and piled close.

Cordwood from shipboard to be measured; measurers' fees

90. All cordwood sold from shipboard shall be surveyed and measured before sale by an officer appointed for the purpose, who shall receive seven cents from the seller for every cord by him surveyed and measured.

Fine for selling without being measured.

91. Persons selling such cordwood without having the same surveyed and measured under the last preceding section shall forfeit the same or the value thereof.

Undimensioned wood to be rejected.

92. All sticks of such wood not of the requisite length shall be rejected by the measurer.

Provisions in case of rotten or crooked wood.

93. Persons offering any cordwood for sale shall pile all the crooked and rotten sticks, if any, separately, and if on

the survey the measurer shall find any rotten wood or any crooked sticks in the cord which shall prevent the same being piled close such crooked or rotten sticks shall be rejected, and the deficiency in the cord made good before sale thereof. CHAP. 85.

94. If any measurer shall violate his duty, he shall forfeit a sum not exceeding four dollars for every offence. Fine for measurer violating his duty.

LUMBER.

95. In the survey of boards there shall be four qualities, viz.:— Boards to be of four qualities—their description.

First.—Clear boards at least one inch in thickness.

Second.—Merchantable boards of first quality, sawed of equal thickness throughout, and when not hardwood, squared at the edges with a saw; to be free from rots, waness, worm holes and auger holes; at least seven-eighths of an inch in thickness, and containing not less than ten superficial feet.

Third.—Merchantable boards of second quality, of the same dimensions, and free from rots, shakes and worm holes; and

Fourth.—Refuse, to include all other descriptions of boards.

96. All dimension deals shall be not less than twelve feet long, nine, eleven and twelve inches wide and three inches thick respectively, having an allowance of from one to two inches in the length, from a quarter to half an inch in the breadth, and from one-eighth to a quarter of an inch in the thickness: they shall be smooth and fair, of equal width and thickness throughout, butted at both ends with a saw, free from rots, sap, stains, large knots, rents, shakes, worm and auger holes, and shall have the stubshot sawn off. Dimension deals defined.

97. All plank intended for exportation, except hardwood plank, shall be from ten to twenty feet in length, nine inches in breadth, and three inches and one-eighth in thickness, and of the same quality as dimension deals. Plank for exportation: their size and quality.

98. All ton timber for exportation shall be straight lined and squared, and with not more than one inch of wane on the edges, without offsets or joints, square, butted at both ends, and free from all marks of scoring, rots, splits or worm holes which may be detrimental to the same. Ton timber for exportation: its size and quality.

99. Merchantable spruce or pine timber shall be sixteen feet, and hardwood timber ten feet in length at least, and at least ten inches square; and where it does not exceed sixteen feet in length, the ends shall be of equal size, and all ton timber shall be measured by the girth, one quarter part thereof to be taken as the side of the square. Merchantable spruce, pine and hardwood timber: the size and quality.

100. In the survey of shingles there shall be three qualities, viz.: Shingles to be of three qualities: their descriptions.

CHAP. 85. No. 1.—Pine or cedar shingles not less than eighteen inches long, four inches wide, and three-eighths of an inch thick at the but, and clear of sap, slash, shakes, twists and worm holes.

No. 2.—Pine, cedar, spruce or hemlock shingles not less than sixteen inches long, three and a half inches wide, and from a quarter to a quarter and a sixteenth of an inch thick, to be free from sap, slash, shakes and worm holes; and

No. 3.—Refuse, to include all other descriptions of shingles.

No. 1 and 2 shingles shall be put up in bundles not less than twenty-five tiers or courses twenty inches wide, four bundles to be considered as a thousand.

All shipping shingles for exportation shall be half an inch thick at the but and extend the same thickness three-fourths of the length, and be shaved from thence to the point, and from four to four and a half inches wide.

Clapboards;
their length
and description

101. Clapboards shall be four feet four inches long, five inches wide, and half an inch thick at the back.

Lathwood; de-
scription of and
how measured.

102. Lathwood shall be of fresh growth, straight rift, free from bark, heart and knots, and measured by the cord.

Staves; their
description and
mode of calcula-
tion.

103. Hogshead staves shall be forty-two inches long, from three and a half to five and a half inches wide, and three quarters of an inch thick on the thinnest edge, and not more than one inch on the back.

Barrel staves shall be thirty-two inches long and half an inch thick on the thinnest edge, and not exceeding three quarters of an inch on the back; to be of good rift, fairly split, free from twists, knot holes, rotten knots, worm holes and shakes, and shall be calculated by the tale of ten hundred to the thousand.

Timber, lumber
and shingles
purchased for
exportation
shall be as re-
spectively de-
scribed.

104. Upon any contract or bargain for a quantity of timber or lumber for exportation, the same shall be understood to mean that which is hereinbefore described, and the purchaser shall not be obliged to receive any other unless under a special written agreement specifying what he actually is to receive.

Duty of lumber
measurers on a
survey.

105. The surveyors of lumber shall when required diligently examine and survey every description of lumber described in any of the preceding sections whether for sale or exportation in their respective districts, and shall mark the same as directed by this section at the time of the survey; but if it shall have been previously surveyed in the province, he shall only re-survey and mark anew the same when he shall have any doubt of the measure; and on every survey he shall furnish the seller and the purchaser each with a certificate thereof specifying the quality and dimensions, and on every stick of ton timber shall mark in figures the contents in cubic feet, the initials of his name, and the private mark of the purchaser; and on

all deals and plank shall mark in lead on the ends, the length, breadth, thickness and superficial contents and his own private mark; and on all boards the superficial contents and his private mark. CHAP. 85.

106. The surveyors of lumber shall receive the following fees, viz: for measuring and surveying all ton timber, five cents per ton, together with seven cents for every mile they shall necessarily travel in coming to the place of the survey. Fees of surveyors of lumber.

For every thousand superficial feet of deals, plank, scantlings and boards respectively, fifteen cents for surveying and five cents for marking; and for viewing only where the same shall have been previously surveyed and the surveyor shall doubt the measure, five cents.

For every cord of lathwood, ten cents.

For every thousand shingles, five cents; and for culling and repacking, ten cents.

For every thousand hogshead staves, thirty cents.

For every thousand barrel staves, fifteen cents.

107. The surveyor's certificate shall be binding between the seller and purchaser, but in case they disagree, either party may call in three other surveyors who are in no way interested in the matter in dispute, to re-survey the same, and their decision shall be final. If the first survey be confirmed, the expense of the second shall fall upon the party by whom it was had, but if the first survey is not established, then the surveyor shall bear the expense of the second survey. Surveyors certificates: their effect; provisions in case of dispute.

108. The surveyor's fees shall in all cases be paid by the seller, who shall remove all obstacles in the way of the surveyor which may prevent him from viewing and measuring with facility any timber or lumber which he may be required to survey, and shall if necessary, have the same canted. But the purchaser, upon any special agreement therefor, or if he shall require a fresh survey, shall pay the surveyor's fees. Fees of surveyor payable by seller: seller's duty on survey.

109. All timber, lumber and shingles, shall be surveyed and marked, as prescribed by this chapter, before delivery on sale or shipment for exportation, and if any person shall violate this provision he shall forfeit the article or the value thereof; but in the city of Halifax entire cargoes of lumber sea borne may be disposed of without the intervention of a surveyor between the first buyer and seller. Timber, lumber and shingles forfeited if sold without being surveyed; cargoes in the city of Halifax excepted.

110. Upon the survey of shingles, clapboards and staves respectively, those which are deficient in quality or dimensions shall be rejected. Shingles, clapboards and staves found defective to be rejected.

111. All shingles and clapboards exposed for sale by quantities in bundles and not holding the number they are marked for shall, unless it appear that part thereof have been accidentally shaken out after packing, be forfeited. Shingles and clapboards forfeited when offered for sale deficient in the marked quantity.

CHAP. 85.

Fine for destroying surveyor's marks on timber, &c.

Fine for lumber surveyor violating his duty.

Limitation of actions.

112. Any person who shall without the permission of the owner of any timber or lumber, alter, deface or destroy the marks of a surveyor of lumber thereon, shall forfeit a sum not exceeding four dollars for each offence.

113. Any surveyor of lumber violating any of these provisions shall forfeit a sum not exceeding twenty dollars for each offence.

114. All prosecutions under these provisions shall be commenced within twelve months from the time of the commission of the offence.

APPLES AND POTATOES.

Size of apple barrels.

115. The size and dimension of barrels used for putting up or packing apples or potatoes for sale shall be as follows; to wit, the length of the stave or barrel shall be twenty-nine inches and the heads between the chimes seventeen inches, with a diameter in the centre inside the barrel of nineteen inches, thus corresponding as nearly as possible in shape and size to the Canadian or American flat hooped flour barrel.

Number of hoops.

116. All barrels used for the shipment of apples or potatoes shall have six hoops; that is to say, two on each end and two on intermediate spaces, and shall also have the top head planed that the barrel may be properly branded or marked.

Barrels to be branded.

117. The makers of all apple or potatoe barrels shall brand the initial of their christian name and their whole surname on the outside of each barrel, near the top of the stave, under a penalty of twenty-five cents.

Penalty for selling in small barrels.

118. Any person putting up apples or potatoes for sale in barrels of smaller dimensions than those hereinbefore described, shall forfeit to the purchaser as damages, an amount in proportion to any diminution of size or loss sustained thereby, to be recovered as an ordinary debt and be liable to a fine of one dollar.

Not to affect flour barrels.

119. Nothing in the four last sections contained shall preclude the use of flour barrels in the shipment of any article of produce.

STAVES AND BRICKS.

Staves, bricks, &c., how counted.

120. All staves, bricks and other articles which are now reckoned by the tale of twelve hundred to the thousand, shall be calculated by the tale of ten hundred to the thousand.

Sessions to appoint officers.

121. The general or a special sessions may appoint all inspectors and other officers necessary for carrying out the provisions of this chapter.

CHAPTER 86.

OF WEIGHTS AND MEASURES.

1. Weights and measures shall be according to the standard now in use.

Standard of weights and measures.

2. The clerk of the peace shall be furnished at the expense of each county or district with a set of standard weights and measures, which shall be accessible to every person at all reasonable times for the purpose of assay.

Clerks of peace to be furnished with sets of standard weights and measures.

3. The clerks of the market, and in places where no such officers are appointed, the town clerks shall keep a set of weights and measures, long, liquid and dry, which shall be stamped by the clerk of the peace with the letter S, and they shall be standard weights and measures.

Clerks of markets to keep stamped weights and measures.

4. Every inhabitant of each town respectively, making use of weights and measures in the sale of any commodity, shall in one week after public notice given by the clerks of the market for such town, bring or cause to be brought their weights and measures to be assayed; for each of which assay the clerk shall have three and one half cents for his trouble, and shall cause such weights and measures to be branded and stamped with the initial letter of the town where such assay shall be made.

All weights and measures to be assayed and stamped.

Clerk's fees.

5. The clerks may inspect all weights and measures, and once in three months or oftener visit every inhabitant selling publicly by weights and measures, and shall have full power and authority to seize all such not stamped or branded as aforesaid, and may assay and mark, and dispose of the same for their own use as satisfaction for their trouble therein.

Inspection of weights and measures; liable to be seized when not branded.

6. The penalty for selling by weights or measures not so branded shall be four dollars for each offence, and for selling by weights or measures less than the standard, forty dollars.

Penalty for selling by weights not branded.

7. Whenever any commodities are sold or conveyed for hire by the hundred weight, such weight shall be understood to mean the net weight of one hundred pounds avoirdupois, such weight to be denominated a quintal; and the ton shall mean the net weight of two thousand pounds, and all contracts concerning the sale or carriage of goods by weight shall be understood and construed accordingly.

Hundred weight to mean net hundred pounds avoirdupois.

Ton to mean net two thousand pounds.

CHAP. 87.

TITLE XXII.
OF CORPORATIONS.

CHAPTER 87.

OF GENERAL PROVISIONS RESPECTING CORPORATIONS.

Corporations;
their powers
and privileges.

1. All corporations shall where no other provision is specially made, be capable in their corporate name to sue and be sued, to prosecute and defend actions, to have a common seal which they may alter at pleasure, to elect in such manner as they may deem proper all necessary officers, and to fix their compensation and to define their duties, and to make bye-laws and regulations not contrary to law nor repugnant to the charter or act by which any such corporation may be created, for their own government and the due management of their affairs.

Bye-laws and
proceedings to
be regulated
thereby.

2. All corporations may by their bye-laws, where no other provision is specially made, determine the manner of calling and conducting meetings, the number of members which shall constitute a quorum, the number of shares which shall entitle the members to one or more votes, the mode of voting by proxy, the mode of selling shares for the non-payment of instalments and of transferring shares generally, the tenure of office of the several officers, and the purchase, conveyance and sale of their real and personal estate; and they may annex penalties to their bye-laws not exceeding in any case the sum of twenty dollars for any one offence.

Proceedings,
how recorded
when required
by the act of
incorporation.

3. When any charter or act of incorporation shall direct that the bye-laws and list of shareholders, or either of them, shall be registered, no bye-law of the incorporation shall be in force until a copy thereof, and also if required by the charter or act of incorporation, a list of the names of all the members of the corporation, with the amount of the stock held by each member respectively, certified under the hand of the president and secretary, or if the company shall not have been organized, under the hands of three at least of the members of the company, of whom one at least shall have been named in the charter or act of incorporation, shall be recorded in the office of the registrar of deeds in such county as may be directed by such act or charter; and no subsequent bye-law, nor any subscription of additional stock, nor the transfer of any stock or shares in the corporation, except by devise or by descent, or other act of law, shall be effectual, until a certificate thereof, under the hand of the president and secretary, shall be recorded

in the same office; and in all cases bye-laws relating to the real estate of the corporation shall before they become effectual, be recorded in manner above mentioned in the office of the registry of deeds for the county or district in which such real estate may be situate. CHAP. 87.

4. The first meeting of all corporations shall, unless otherwise provided in their charters or acts of incorporation, be called by notice signed by any one or more of the persons named in the charter or act of incorporation, and setting forth the time, place and purposes of the meeting; and such notice shall, seven days at least before the meeting, be delivered to each member, or left at his place of residence, or published in some newspaper of the county where the corporation may be established, or where its principal place of business shall be situate, or if there be no newspaper in the county, then in two of the Halifax newspapers. First meeting;
how called.

5. Whenever by reason of the death, absence or disability of the officers of any corporation there shall be no person authorized to call or preside at a meeting thereof, any justice of the peace may, on a written application of three or more of the members, issue a warrant to any one of such members, directing him to call a meeting of the corporation by giving the notice as required by law, and the justice may in the same warrant direct such person to preside at such meeting if there shall be no officer present legally authorized to preside thereat. How called in
special cases.

6. Such corporation when so assembled may elect officers to fill all vacancies then existing, and may act upon such other business as might by law be transacted at regular meetings of the corporation. Powers and
duties of corpo-
ration when
assembled.

7. Notwithstanding the corporation may hold real estate, the shares of the stockholders shall be deemed to be personal property for all purposes. Shares to be
personal prop-
erty.

8. The real estate of the company may be sold under execution in the same manner as personal estate, and the sheriff shall immediately after the sale execute a deed to the purchaser, which shall convey all the estate and interest of the company in the real estate so sold and conveyed. Real estate to
be sold as per-
sonal property.

9. All acts or charters of incorporation shall expire unless the company thereby established shall go into operation within three years from the passing thereof, unless otherwise specially provided therein. Acts to expire
unless put in
operation with-
in three years.

10. All corporations whose charters after they shall have gone into operation shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless be continued as bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle Charters to con-
tinue three
years after ex-
piration for clo-
sing concerns.

CHAP. 87. and close their concerns, to dispose of and convey their property, and to divide their capital stock ; but not for the purpose of continuing the business for which such corporations were established.

Trustees may be appointed to wind up business within the three years.

11. When the charter of any corporation shall expire or be annulled, as provided in the preceding section, the supreme court on application of any creditor of such corporation, or of any member at any time within the three years, may appoint a trustee or trustees to take charge of the estate and effects of the corporation, and to collect the debts and property due and belonging thereto, with power to prosecute and defend suits in the name of the corporation, and to appoint agents under them, and to do all other acts which might be done by such corporation if in being that may be necessary for the final settlement of the unfinished business of the corporation ; and the power of such trustees may be continued beyond the three years and as long as the court shall think necessary.

Officers and members how sued.

12. When any officer or member of a corporation is liable for any debts of the corporation or for acts in relation to its business, or to contribute for money paid by other officers or members on account of any such debts or acts, he may be sued therefor in the supreme court.

Liability of individual members.

13. No member of any corporation shall be relieved from individual liability for its debts or obligations ; but each member thereof shall be liable as a partner to the same extent as if no corporation existed ; and in case any execution issued on any judgment against the corporation shall be returned unsatisfied, the individual real and personal estate of every member of the corporation shall be liable to respond such judgment under execution issued thereon in the same manner as if the same were a private debt due by such member, unless the special act creating the corporation shall exempt its members from such liability ; and any member who shall be so compelled to pay any monies on account of the debts of the corporation shall be entitled to credit therefor in the books of the corporation.

Liability of directors, &c, personally in special cases for overtrading.

14. The directors or board of managers of any such corporation, the liability of whose members shall be limited by the act or charter of incorporation, unless otherwise specially directed therein, shall in all cases be personally liable for any responsibility incurred by them on account of the corporation beyond the amount of the stock subscribed without the sanction of the company to be obtained at a meeting thereof held in accordance with the bye-laws, unless such larger amount of dealing be specially authorized by the act or charter of incorporation ; but this section shall not extend to insurance companies.

Acts of companies valid without seal.

15. The acts of incorporated companies performed within the scope of their charters or acts creating them shall

be valid, notwithstanding they may not be done under or be authenticated by the seal of such corporations. CHAP. 87.

16. No corporation shall issue notes or bills for payment of money, for the purpose of circulating the same as money, or engage in any banking or insurance business unless especially authorized to do so by its act of incorporation, and if any corporation not so authorized, shall issue such bills or notes, or shall engage in any banking or insurance business, its charter shall be thereby rendered void.

No company to engage in banking or insurance business unless specially authorized.

17. Whenever in any act or charter of incorporation any disputes or matters of controversy in which the corporation may be interested, or any damages to which they may become liable, shall be directed to be settled or ascertained by arbitration, the mode of proceeding on such arbitration, unless otherwise prescribed, shall be as follows, viz: unless both parties shall concur in the appointment of a single arbitrator, each party on the request of the other party shall by writing under the hand of the parties interested, or on behalf of the corporation under the hand of the president or one of the directors and the secretary, appoint an arbitrator to decide the matter in question, and after such appointment shall have been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of any of the parties operate as a revocation thereof; and if either party shall fail to appoint an arbitrator within fourteen days after service upon him of such written request, a judge of the supreme court at the instance of the party making such request may appoint an arbitrator to act on behalf of both parties, who may proceed to hear and determine the matters in question, and his award shall be final. If any arbitrator after his appointment die or become incapable from absence or otherwise, or refuse, or for seven days neglect, to act as arbitrator, the party by whom he was nominated, or a judge of the supreme court, may appoint in writing some other person to act in his place, and if for seven days after such substituted arbitrator shall have received notice in writing from the other party for that purpose he fail to do so, the other arbitrator may proceed to hear and determine the matters in question.

Arbitrations; how conducted where a corporation is a party

Where two arbitrators shall have been appointed, they shall before entering upon the matters referred to them, appoint by writing under their hands an umpire to decide in case they shall differ, and if the umpire shall die, refuse, or for seven days neglect, to act, they shall forthwith appoint another umpire in his place, whose award together with that of one or both of the arbitrators, shall be final.

The arbitrators or umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the matters referred to them, and may examine the parties and

CHAP. 87. their witnesses on oath, and administer the oaths necessary for that purpose.

Unless otherwise provided in the act or charter of incorporation, the costs attending such arbitration shall be paid by such party or by both parties in such proportions as may be directed in the award.

The submission to any such arbitration may be by rule or order of any court.

Abstract of receipts, &c. of all joint stock incorporated companies to be filed, &c.

18. All joint stock incorporated companies doing business in this province by agents or otherwise shall, once in every year, produce and file in the provincial secretary's office an abstract of all their receipts, expenditures, profits and losses within the province, and when required by the governor in council such rules, bye-laws, accounts and such other of their proceedings as shall be specified in such requisition.

Penalty.

19. Any such corporate body refusing or neglecting to furnish such abstract or to comply with such requisition, shall forfeit a penalty of twenty dollars for every month during which such default shall continue.

Insurance corporations to make annual returns to office of provincial secretary.

20. On or before the last day of February in every year a return shall be made into the provincial secretary's office by the president, agent or manager of every company, corporate body or agency, doing business as insurers in this province, of the business of insurance upon lives, against fire, and upon all marine risks done by them respectively between the first day of January and the 31st day of December preceding such return, both days being included, which return shall comprehend the number of policies entered into, the number of policies renewed, the amount insured, and the premiums paid, and in case of insurance against fire, the nature of the property insured, whether real or personal and its situation, whether in the city of Halifax or in other parts of the province; in case of marine risks the ports to which the vessels insured belong, where it can be known, and shall also state the capital and other security for the payment of losses, and where the same is situated; and in case of companies and corporate bodies out of Nova Scotia, whether there is any security or capital within the province for the payment of losses, and the nature, permanency and amount thereof, which returns shall be certified to be true by the president, agent or manager of every such company, corporate body or agency respectively; and every such president, agent or manager neglecting to make such return or knowingly make a false or defective return, shall forfeit two hundred dollars.

Acts of incorporated pier companies, &c., to continue to 31st december, 1875.

21. All acts of incorporation of wharf, pier or break-water companies, heretofore passed by the legislature, whether temporary or perpetual, and also all such acts of incorporation hereafter to be passed previous to the session

of the general assembly, in the year one thousand eight hundred and seventy-five, shall continue in force until the thirty-first day of December in that year, and no longer unless renewed by act of the legislature. CHAP. 88.

CHAPTER 88.

OF AGRICULTURAL AND LAND CORPORATIONS.

1. Whenever twenty persons or more shall raise forty dollars per annum or upwards, to be applied for the improvement of agriculture, they shall thereupon become a corporate body by such name as they shall think fit, with all the privileges and obligations in chapter eighty-seven, but such privileges shall continue only so long as there are twenty members or more in the society, and they shall annually raise the sum of forty dollars at the least and apply it for the improvement of the local agriculture. Agricultural corporations, how organized.

2. Whenever any British subjects desire to form an association for the purchase and improvement of crown lands on the lines of the contemplated trunk line of railroad from Halifax to Quebec, they may transmit the names of such persons, not less than twenty, as they wish to represent them, to the commissioners of lands and emigration, to be transmitted to the lieutenant-governor of this province, who shall thereupon, if, with the advice of council, it be determined to invest such persons with corporate powers, direct their names to be inserted in the royal gazette and a patent to issue clothing such persons and their co-partners with the privileges and legal liabilities of a corporation, upon the following terms, subject to such restrictions as may by the governor in council be deemed necessary: Formation of an association for improvement of lands.

First—The name of the company and the names of its directors to be lodged in the office of the provincial secretary, with an impression of its common seal. Privileges, liabilities and restrictions of the company,

Second—The directors to be liable to the whole extent of their fortunes for the debts of the company, being vested with power to sue and be sued in their corporate capacity.

Third—The shareholders to be liable only to the extent of their shares.

Fourth—The company to purchase fifty thousand acres of crown lands on the line of railroad at such price as may be determined upon by the government, with power to purchase any further quantity, when one-half of the original purchase has been sold and settled.

CHAP. 88. Fifth—The lands to be laid off in lots of one hundred acres at the expense of the government, and numbered on the plans from one to five hundred, it being provided in the general grant, that every lot on which there is not a dwelling house actually occupied, and at least five acres of land cleared and improved, at the end of ten years from the date of its purchase, shall revert to the government, and become a part of the public domain, upon a declaration of the governor in council to that effect, without office found.

Sixth—Where the lands purchased are in one block, and are not included in any township, they shall be formed into a township, and the inhabitants whenever they shall number one hundred heads of families shall be invested by law with all the privileges of township organization.

Seventh—The capital of the company shall be limited to two hundred thousand dollars, but may be increased by four dollars for every acre of land purchased from the provincial government above the quantity specified in the fourth condition.

Power of company over land.

3. The company shall have power over such lands as they shall purchase, over mines not subject to legal reservations, over the standing timber, mill sites and water privileges; and may lay off and sell such lands in town-lots or blocks of less or more than one hundred acres, at their option, and for the general advantage.

Company may contract for railways running through their lands.

4. The company may enter into contracts with any commissioners appointed by the provincial government to construct so much of the railway as will run through the lands purchased, and to work and repair such railway after it is made; but no greater amount shall be charged for the construction and working of such sections of the railway than is paid for constructing and working other portions of the line.

TITLE XXIII. OF THE POOR.

CHAPTER 89.

OF THE SETTLEMENT AND SUPPORT OF THE POOR.

Definition of the word township.

1. The words "township" and "settlement" when used in this title shall be held to mean any district set off and established as a district for the support of the poor.

2. The grand jury shall annually at the sessions nominate ten freeholders out of every township, of whom the court shall appoint five to be overseers of the poor; and if any person so appointed shall cease to reside in the township or shall die within the period for which he was appointed, any two justices of the county may appoint another to act instead until the next meeting of the grand jury and court of sessions.

CHAP. 89.

Overseers of
poor how ap-
pointed.

3. Every person who hath lived as a hired servant one whole year therein under an agreement to serve the same master one whole year then next before application for relief, or hath executed a public annual office therein, or hath been assessed and paid his share of poor and county rates in the township during one year at one time, shall be entitled to a settlement; and any person who shall have resided in any poor district for five years consecutively after arriving at the age of twenty-one years, and who during that time shall not have received aid from the overseers of the poor as a pauper, shall have a settlement on such poor district; and all persons under the age of twenty one years who have served an apprenticeship within any poor district to any trade for the space of two years, shall have a settlement therein.

Settlement,
how gained.Persons entitled
to a settlement
on the district.

Under age.

4. The settlement of any legitimate child shall be that of the father, if the father have any; if not, that of the mother, if the mother have any; illegitimate children shall have the settlement of the mother, if the mother have any; but in case a child has no settlement by parentage the birth-place of such child shall be the place of settlement.

Settlement of
children.

5. A married woman shall have the settlement of her husband if the husband have any; if not her own settlement if she have any shall not be suspended by her marriage.

Settlement of
married women

6. A legal settlement shall cease when a new one is gained, and shall not revive.

Settlement to
cease when new
one acquired.

7. When a poor district shall be divided or a new district created the settlement of any person dwelling within such divided or newly created poor district shall be within the limits of the district in which such person may have dwelt at the time of such division or creation.

In case of divi-
sion of district,
&c.

8. Any person applying to the overseers of poor of any township for relief who shall not have obtained a settlement therein shall be required to declare on oath before a justice of the peace his last place of residence, and if he be found to have gained a settlement within the province a copy of the declaration certified by the justice, with the amount of expense incurred, shall be transmitted to the overseers of the poor of the township to which such person belongs.

Proceedings
preparatory to
the removal of
a pauper.

9. If such last mentioned overseers refuse or neglect to remove such person, two justices by a warrant shall cause

If the overseers
of the place of
his settlement

CHAP. 89. such person to be removed to the township where a last settlement has been obtained, and the overseers of the poor there shall receive such person and pay to the overseers of the first named township the necessary expense incurred about his removal. If the overseers of the last named township have no money in hand to pay such expense they shall stand charged therewith until the next assessment made on the township to which such person belongs.

refuse to remove him a warrant for his removal may issue.

Examination when pauper insane.

10. In the event of any pauper whose examination it may be necessary to take as to his last place of settlement being insane, or otherwise incapable or incompetent to undergo such examination, any justice may take such other testimony under oath as to the settlement of such pauper as to such justice may appear satisfactory; and thereupon such pauper may be removed as if he had been personally examined.

Persons near of kin and able, required to maintain their poor relations.

11. The father, grand father, mother, grand mother, children and grand children respectively, of every old, blind, lame, impotent or other poor person not able to work, being of sufficient ability, shall relieve and maintain at their own charge every such poor person as a general or special sessions shall direct, and in case of refusal shall forfeit one dollar per week for such poor person, to be sued for in the name of the overseers of the poor.

Property of persons forsaking their families may if necessary be seized and sold for their support.

12. Where any husband or father shall forsake his wife or children, or any widow shall forsake her children and leave them a public charge, two justices on the application of the overseers of the township, shall issue a warrant to seize the goods, and to let out and receive the annual rents and profits of the lands of such husband, father or widow towards the maintenance of such wife, child or children; and when the seizure shall be confirmed by the sessions any two overseers may as occasion shall require dispose at public sale of such goods or so much thereof as shall be necessary and shall apply the proceeds towards the maintenance of such destitute persons.

Children to be supported where deceased parents have gained settlement.

13. The children of deceased parents who have gained a settlement in any township shall, if paupers, be supported by such township.

Appeals provided for parties aggrieved.

14. If any overseers on behalf of the township or any other person shall feel aggrieved by any proceedings under this chapter, such overseers or person may appeal to the next sessions to be held for the county where the township is or the person shall reside, and the sessions shall hear and determine the same; but in cases of disputed settlement an appeal shall be from their decision to the next term of the supreme court in the county or to a judge at chambers.

In cases of disputed settlement appeal from sessions to judge at chambers.

Proceedings on appeal where a person has been unduly removed.

15. If the justices on an appeal concerning the settlement of a poor person determine that such poor person was unduly removed, they shall then or at a future sessions order to be paid to the appellants any money that may

have been paid by such appellants, or may be due from them as overseers on account of such poor person between the time of the undue removal and the determination of the appeal, the same to be recovered as hereinafter provided. CHAP. 89.

16. Upon the determination of an appeal concerning the settlement of a poor person, or upon proof of notice of an appeal given by the proper officer to the overseers of the poor, though the appeal be not prosecuted, the justices shall then or at a future sessions order to the successful party on a trial, or to the party notified if not further prosecuted, such costs as in their discretion are reasonable, to be taxed and allowed according to the rates adopted in the supreme court, which shall be paid by the unsuccessful party or the party giving such notice. Costs on appeal
—how taxed
and allowed.

17. If the overseers or other person ordered to pay such sum of money or costs, shall after service of a copy of such order refuse to pay the same, the party in whose favor such order is made may sue for and recover the amount as if it were a private debt with costs; and the production and proof on the trial of the order or copy thereof and of the service thereof, shall be sufficient proof of the debt. Amount ordered to be
paid—how
recovered.

18. Every township shall be liable to pay any expense which shall necessarily be incurred for the relief of a pauper by any person who is not liable by law for his support, after notice and request made to the overseers of the township, and until provision shall be made by them. Townships liable
for support
of poor after
notice.

19. If any person shall bring any poor and indigent person into any township where such person has not a lawful settlement, knowing him to be poor and indigent, and shall leave him therein with intent to charge such township with his support, he shall forfeit a sum not exceeding eighty dollars for every such offence. Penalty for im-
properly bring-
ing a pauper
into a township.

20. The inhabitants of every township liable to pay poor rates shall hold two meetings annually if necessary, to provide for the support of their poor, which shall be held on the first Mondays of April and November, except in the township of Dartmouth, wherein the first of such annual meetings shall be held on the first Monday of March. Town meetings
and the days
for holding.

21. The overseers of the poor in the several townships shall at least ten days before the times appointed for holding meetings to provide for the support of the poor, cause advertisements to be posted up in at least five of the most public places in the township, notifying the inhabitants to meet on the several days respectively for that purpose, and in case of neglect such overseers shall forfeit forty dollars. Overseers to
notify the meet-
ings by adver-
tisements.

22. The inhabitants present at such meetings having first chosen a chairman to preside, shall vote such sums of money as they shall judge necessary for the support of the Proceedings at
meetings; mo-
ney to be voted;
assessors cho-
sen.

CHAP. 89. poor for the current year or until the next meeting, and incidental expenses connected therewith; and shall choose so many collectors as they may deem necessary to collect the poor rates for the district or township within which such meeting shall be holden, and shall also choose a clerk to be called the clerk of such poor district, who shall act as clerk to the overseers of the poor for the district; and such inhabitants shall award to their clerk a reasonable remuneration, to be fixed at such meeting, and added to the amount to be assessed on the district.

Meetings may be adjourned if necessary.

23. If the business of the meeting cannot be completed on the days above respectively named, the chairman with the consent of the majority of those present, shall adjourn the meeting as occasion may require to conclude the business.

Deficiencies of money may be voted at subsequent meeting.

24. If the money voted at any meeting shall be insufficient for the support of the poor, the inhabitants at their next meeting shall vote sufficient to make good the deficiency.

Poor houses may be built or hired; title how vested; poor how managed.

25. The inhabitants if deemed advisable may at such meeting determine to erect or hire a building for a poor house, and may vote money for that purpose and for the annual repairs and other necessary expenses connected therewith; and thereupon the overseers shall proceed to hire or erect a building as directed, the title and interest in which, when conveyed to them, shall vest in them and their successors in office as a body corporate. The overseers shall have the control and management of the poor house and the supervision and government of the inmates, and may appoint the officers and keepers thereof, and may purchase materials upon which the labor of the poor may be profitably employed. They shall annually submit an account of their proceedings and of the general state of the institution and of their receipts and expenditures for the examination and audit of the sessions.

Proceedings to collect rates shall be by general warrant of distress; form given, fees, &c.

26. Separate suits shall not in future be brought against defaulters, but every collector shall make a general return to a justice within the township, or if none reside there to any justice of the county of every person upon his list, who, after demand made, shall not have paid his rate;—and the collector shall make oath in writing before such justice, setting forth the name of every defaulter, the sum assessed, that the demand has been made, and that the rate is unpaid; and thereupon such justice shall forthwith issue a general warrant of distress against the several defaulters in the form in the schedule, directed to a constable not being such collector, commanding him to levy upon the goods of each person named in the warrant the sum due by such person, with constable's and justice's fees. The constable shall forthwith execute the warrant and pay over the amount col-

lected to the collector, who shall thereupon pay the same CHAP. 89.
to the overseers. The justice's fee for such warrant shall
be seventy cents, and the constable's fee for each person
in the warrant shall be twenty cents, but the constable
shall have no travelling fees or poundage, and the justice's
fee shall be apportioned among the several persons, if more
than one, in the warrant.

27. The justices in general or special sessions, as the Appellants to be
relieved by the
sessions.
case may be, may relieve appellants as they shall see fit,
and may order the overseers of the poor to refund any ex-
cess of rates collected.

28. No person shall be assessed for the support of the Parties liable to
be assessed.
poor unless in the opinion of the assessors he is able to pay
a rate of at least twenty cents annually.

29. If any person think himself over-rated he may ap- Overrated per-
sons may ap-
peal.
peal to the next sessions or to the next special sessions to
be held for hearing such appeals, in the county or district
wherein the assessment was made; and the order of such
court of appeal shall be final.

30. The overseers shall apply all sums of money voted Appropriation
of monies; col-
lectors may be
sued by over-
seer.
and received by them for the purposes specified; and any
collector who shall neglect to pay over to the overseers
any sum by him collected may be sued by them, and the
amount shall be recovered as if it were a private debt.

31. The overseers of the poor shall within one month Accounts of
overseers, when
and how ren-
dered.
after the expiration of their office render to the clerk of
the peace of the county in which they reside, to be laid
before a general or special sessions, an account of all
money received and the particulars of all expenditures by
them for the support of the poor, and shall account for the
same on oath, if required, before such sessions. In case
there is no clerk and treasurer for the district, they shall
enter their proceedings in a book to be kept for the pur-
pose, and at the expiration of their office shall deliver the
same, and any money in hand unexpended to their suc-
cessors.

32. The general or special sessions shall examine the Sessions to
audit the ac-
counts.
accounts of overseers of the poor when so submitted, and
shall allow or disallow the same as shall seem proper, and
determine the just balance that may be due thereon.

33. Every person appointed an overseer of poor who Fine for refu-
sal to serve as
overseer.
shall refuse to serve shall forfeit twenty dollars, to be re-
covered by the overseers of poor next in office for the same
place.

34. Overseers of poor who shall not within one month Fine for neg-
lecting to ren-
der accounts as
required.
after the expiration of their office render to the clerk of
the peace an account of all sums of money received and
expended by them, shall forfeit twenty dollars.

35. If the inhabitants of any township shall neglect to Townships may
be amerced by
the sessions in
case of neglect
to assess for the
support of poor.
meet as required, or having met, shall neglect to make
adequate provision for the support of their poor, the

CHAP. 89. justices in session or any special sessions called for the purpose, shall on the application of the overseers of poor for such township, amerce the same in a sum necessary for that purpose.

Fine for collectors refusing to serve; appointment of others.

36. Every person appointed a collector who shall refuse to serve shall forfeit eight dollars, and another collector shall be forthwith appointed in his place.

Collectors to account and pay over to overseers once every three months.

37. Every collector shall collect the whole rate as far as may be practicable and shall account with and pay over the same to the overseers within three months from the time at which he shall receive the rate list, and upon neglect so to account and pay the same may be recovered by the overseers as a private debt.

Fine for collector neglecting duty.

38. Every collector who shall neglect for thirty days after acceptance of office to perform the duty thereof, shall forfeit twenty dollars.

Persons receiving aid shall refund the amount if able.

39. When any person shall apply for and obtain relief from the overseers, and it shall happen that such person was at the time possessed of or entitled to any property, out of which the expenses so incurred may be repaid, the overseers may demand and recover from such person a repayment of the expenses so incurred, as if it were a private debt; and any money recovered shall be accounted for by such overseers as other public money.

Assessors not exempt from assessments; fine for neglecting to assess themselves.

40. No person being an assessor shall on that account be exempt from assessments; and any assessor who shall neglect to assess himself in a just proportion, shall forfeit twenty dollars.

Commissions to collectors.

41. The sessions shall establish the rate of commission to be allowed to collectors of poor rates, but the same shall not exceed five per cent.

Forfeitures—how applied.

42. All forfeitures under this chapter when recovered, shall be applied to the support of the poor of the township.

Clerk and treasurer may be appointed; bonds to be given.

43. The inhabitants at one of their meetings may, if they see fit, provide a salary for an officer to be called clerk and treasurer of the district, and thereupon may appoint a person, not being an overseer, assessor or collector, to fill the office. He shall give a bond to the overseers by their name of office, with two sureties, in double the amount of the annual assessment, or thereabouts, conditioned for the faithful discharge of his duty, and shall be sworn into office.

Duty of clerk.

44. The clerk shall be under the direction of the town meeting while in session, and shall keep a correct record of its proceedings from time to time in a book to be furnished him for that purpose, which book shall be open for inspection to all rate payers at all reasonable times. He shall assist the assessors when required, in writing out and copying rate bills; he shall assist the overseers in making up their accounts, and shall audit and check the same.

45. The treasurer shall be under the direction of the township meeting while in session, and he shall be authorised to give receipts and discharges to collectors for monies paid by them to him, and he shall pay over monies so received upon orders addressed to him in that behalf by the overseers; he shall file away for future reference all accounts, papers and vouchers relating to his office, and produce the same when required by the town meeting or the overseers, and shall generally discharge the duties of clerk and treasurer to the district; he shall not receive or take any commissions or other remuneration except his salary, which shall not be required to be voted annually, but shall be continued until otherwise altered by a vote of the town meeting.

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Duty of treasurer.

46. This chapter shall extend to the city of Halifax in all cases where its provisions are not inconsistent with those in the act concerning the city, passed in the session of 1864.

Chapter applicable to city of Halifax where not inconsistent with act of incorporation.

47. The meeting may appoint one and the same person to be clerk and treasurer if they see fit.

Same person may be clerk and treasurer.

SCHEDULE,

Form of general warrant of distress.

County of } To A. B., one of the constables of the said
 ———, } county.

Whereas by a rate and assessment made in conformity with law the persons named in the schedule have been assessed for poor rates for a period ending the ——— day of ———; and whereas it appears to me, one of the justices of the peace for such county, upon the oath of C. D., one of the collectors for the township of ———, that the several sums for which they have been assessed have been demanded from such persons respectively, and that the sums set opposite their names in the schedule hereto annexed remain unpaid. These are therefore to require you forthwith to make distress of the goods and chattels of the persons mentioned in the schedule; and if within the space of five days next after such distress by you taken the sums in the schedule set opposite their respective names, together with their proportion of justice's and constable's fees, and the necessary charges of taking and keeping the distress be not paid by each of them respectively, that then you do sell the goods and chattels of such of them as shall not have paid such sums with fees as above mentioned; and out of the monies arising from such sale you do forthwith pay over the sums so due by them respectively to the said C. D., the collector, together with the justice's and constable's fees, if any, by him paid;

CHAP. 90. and that you do render to the owners of the goods respectively upon demand the surplus remaining from such sale, the necessary charges of taking, keeping and selling the distress, being first deducted. And if no such distress can be made, that then you certify the same to me.

Given under my hand and seal the — day of —, A. D. 18—.

(Signed) E. F., J. P. (Seal.)

CHAPTER 90.

OF POOR DISTRICTS.

Poor districts confirmed.

1. Poor districts as now established shall so continue until altered by law.

Proceedings for dividing districts; sessions may make orders for shewing cause.

2. If twenty or more of the ratepayers within any township established for the support of poor shall, by petition, apply to the court of sessions, stating their desire that such township should be divided into two or more districts, and setting forth the proposed boundaries thereof, the court may, if they think fit, pass an order calling upon the parties interested to shew cause at the next sessions why such division should not be made.

Orders to be posted.

3. Copies of such order, setting forth particularly such proposed boundaries, shall be posted up in at least five of the most public places within the township sought to be divided for at least thirty days next previous to the ensuing sessions.

Orders may be made dividing townships into districts, with names, &c.

4. At such sessions the court may, if they think fit, make an order dividing the township, either by the boundaries so proposed, or by such other boundaries as may be deemed proper, into as many districts as may be thought necessary for the future support of the poor within the same, with a name or designation to each.

Sessions may by order adjust expenses and the support of present paupers

5. The sessions shall thereupon also ascertain the number of paupers then chargeable on the whole township divided and the amount required for their support, and by order direct the proportion to be borne by each of such new districts; and thereafter the expenses of paupers shall be chargeable on the district in which a settlement shall have been gained.

Sessions may readjust expenses and subsequent orders.

6. The court of sessions may at any time alter or make anew any order in relation to the expenses of paupers, chargeable at the date of their first order on the whole township, thereby to effect a more equal distribution of such expenses rendered necessary by any increase or diminution thereof.

7. All rates, assessments, suits or actions, pending at the date of such first order, may be prosecuted, levied and collected, as if such division had not been made. CHAP. 91.

Rates pending at such division not thereby invalidated.

CHAPTER 91. *Amended act, 1866*

OF THE MAINTENANCE OF BASTARD CHILDREN. *Cap 14. Sec 1*

1. If any woman shall become pregnant with a bastard child likely to become chargeable to any township, she shall make oath in writing before a justice for the county where she resides that she is so pregnant, and who is the father of the child; and such justice shall forthwith issue his warrant to apprehend the reputed father and cause him to be brought before him or some other justice of the county.

Information of woman pregnant with a bastard child—how taken, and justices warrant thereon.

2. The reputed father when brought before a justice, shall be required to enter into a bond, with a surety, to indemnify such township until after the birth of the child and until an order of filiation shall be made thereon, or till the reputed father be discharged on examination and hearing preparatory to the passing such order; and in default shall be committed to jail to remain until such examination and hearing can be had or such bond given.

Reputed father to enter into bonds until after the birth.

3. As soon as convenient after the birth of the child, two justices, on application of an overseer of the poor or some substantial householder of such township, shall issue a warrant to bring the mother and reputed father before them at a time and place therein mentioned, and shall hear the evidence of the mother, the reputed father, and of any other person, and shall either discharge the reputed father or make an order of filiation to indemnify the township for the expenses connected with the lying in and maintenance of the mother and the birth and maintenance of the child to the date of the order, and that the reputed father pay such sum weekly as they shall consider right, respect being had to his ability towards the support of the bastard child while chargeable to such township.

Hearing after the birth and order of filiation.

4. If the person against whom any warrant shall issue under the provisions of this chapter shall not be found within the jurisdiction of the justice or justices issuing the same, or if he shall be suspected to be in any place within this province, a justice of the county or place where such person shall be or be suspected to be, upon proof made upon oath of the handwriting of the justice or justices issuing the warrant, may make an endorsement as nearly as may be in the form hereto annexed, upon such

Where reputed father not found or is in another jurisdiction warrant may be endorsed over.

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warrant, signed with his name, and authorizing the execution thereof as thereon endorsed, and the carrying of the person therein named, when apprehended before the justice or justices who first issued the warrant.

Reputed father shall give a bond to fulfil the order or pay eighty dollars, or suffer six months imprisonment.

5. The reputed father shall then enter into a bond with one surety to fulfil the order of filiation, or shall pay to the overseers of the poor eighty dollars for the support of each such child or other town uses, and in default shall be forthwith committed to jail for a time not to exceed six months or until he shall have entered into such bond or paid the eighty dollars.

Information within three months after birth, and justices warrant thereon.

6. If the mother of a bastard child shall not previously to its birth have made oath in writing before a justice disclosing the reputed father, any justice may at any time within three months after the birth, on application of an overseer of the poor of the township where the child has been or is likely to become chargeable, take the oath of the mother in writing, declaring who is the father of such child, and thereupon two justices shall issue a warrant to bring the reputed father and the mother before them at a time and place therein named, and such proceedings shall be had thereon as directed in cases where the mother has disclosed the name of the father before the birth.

When the reputed father cannot be served the order of filiation may be made in his absence; proceedings thereon.

7. If any reputed father shall conceal himself or so avoid service of a warrant that he cannot be brought before the justices as therein directed for hearing and examination, then they may make up their order of filiation in his absence and issue their warrant to bring him before them at a subsequent day and place therein mentioned, to shew cause why he should not obey the order and enter into a bond to indemnify the township from the charge of such child.

Such order may be subsequently confirmed or reversed; proceedings thereon.

8. At the time and place appointed the justices shall proceed to confirm, reverse, modify or make a new order of filiation as may seem right, and thereupon the reputed father shall immediately enter into a bond with one surety to perform the order so confirmed, modified or made anew, or shall pay eighty dollars for the support of the child or other town uses; and in default shall be liable to the penalties and imprisonment before prescribed for non-performance of an order of filiation.

Appeal from order of filiation

9. If either party feel aggrieved by an order of filiation or by the refusal to make such order, he may appeal to the next supreme court to be held in the county, except in Halifax where the appeal shall be to the next general sessions, where the whole matter may be heard and tried by a jury as a civil action, and the order of filiation confirmed or quashed, and the decision of such court shall be final; but before such appeal shall be granted the reputed father shall enter into a bond with one surety approved by the justices making the order, to perform the order of

filiation, if confirmed, and in such case to pay the costs CHAP. 91.
incurred by the overseers in consequence of the appeal.

10. Upon the examination and hearing preparatory to making an order of filiation, the justices may direct that the mother shall bear a part or the whole of the expense of the maintenance of such child, either by nursing the child or as otherwise directed in the order of filiation, or make any other order in relation thereto.

Power of justices to control the expenses in making an order of filiation, and to make further orders.

11. The overseers for any township may sue in their own names upon any bond entered into under this chapter, whether made to them or their predecessors in office; and such suit shall not abate by the death or removal from office of such overseers of poor or any of them.

Overseers may sue bonds in their own names; death or removal from office shall not abate such suit.

12. The following forms shall be used and adhered to as nearly as may be:— Forms.

Examination of mother previous to birth of child.

County of _____ ss.

The examination of A. B., of _____, in the county of _____, taken on oath before me, who deposes that she is with child which is likely to be born a bastard and to be chargeable to the township of _____, and that C. D., of _____, is the father of such child.

A. B.

Sworn before me, this _____ day of _____, A. D., 18—.

E. F., J. P.

Warrant to apprehend the reputed father before the birth.

County of _____ ss.

To any constables of the said county.

Whereas A. B. of _____, in the said county, hath by her examination in writing, taken upon oath before me this day, declared herself to be with child, which is likely to be born a bastard, and to be chargeable to the township of _____ and that C. D. of _____ is the father of such child, I do hereby command you to apprehend the said C. D. and bring him before me or some other justice for the said county, to find security to perform any order of filiation that may be made; or in default thereof to commit him to jail, there to remain until an order of filiation shall be made.

Witness my hand and seal this _____ day of _____,
A. D. 18—.

E. F., J. P. (Seal.)

Form of a commitment where a reputed father when brought up before birth of child refuses to enter into bond of indemnity, to be endorsed on the warrant.

Whereas the within named C. D. now before me hath refused to enter into a sufficient bond to perform an order

CHAP. 91. of filiation if made, I hereby order that he be committed to jail, there to remain until he shall have given such bond, or be brought up for further examination in the premises.

Witness my hand and seal, this — day of —, A. D., 18—.

E. F., J. P. (seal.)

Endorsement backing a warrant.

County of —.

Whereas proof upon oath has this day been made before me —, a justice of the peace for the county of —, that the name of —, to the within warrant subscribed, is the handwriting of the justice of the peace within mentioned: I do therefore hereby authorize A. B., who bringeth me this warrant, and all other persons to whom the same was originally directed, or by whom it may be lawfully executed, and also all constables and other peace officers in this county to execute the same within this county, and to take the said C. D., if apprehended within this county, before the justice [*or justices, as the case may be,*] who issued such warrant, to be further dealt with according to law.

Given under my hand, this — day of —, A. D. 18—.

E. F., justice of the peace for —.

Examination of mother after the birth of child.

County of —, ss.

The examination of A. B., of —, in the said county —, taken upon oath before me, who deposeth that on the — day of —, last past, at —, she, the said A. B., was delivered of a [*male or female*] bastard child, which is likely to become chargeable to the township of —, and that C. D. of —, is the father of such child.

A. B.

Sworn to before me this — day of —, A. D. 18—.

E. F., J. P.

Bond of indemnification.

Know all men by these presents that we, C. D., of —, in the county of —, and G. H., of —, in the same county —, are held and firmly bound unto the overseers of the poor for the township of —, in the said county, and their successors in office, in — dollars, to be paid to the said overseers of the poor or their successors in office; for which payment well and truly to be made we bind ourselves and each of us by himself, our and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals. Dated this — day of —, A. D., 18—.

Whereas A. B. of ———, hath declared on oath that she CHAP. 91.
is with child, which is likely to be born a bastard and
to be chargeable to the township of ———, and the above
bounden C. D. is the father of such child.

Now the condition of this obligation is such, that if the
said C. D., his executors or administrators, do and shall
perform any order of filiation that may be made upon him
in the premises, then this obligation to be void.

Signed, sealed and delivered, }
in presence of }
J. K. }
C. D. (seal.)
G. H. (seal.)

*Warrant to bring up mother and reputed father after birth of
child.*

County of ———, ss.

To any of the constables of the said county.

Whereas A. B. of ———, in the said county ———, hath
by her examination in writing on oath, taken before us,
declared that on the ——— day of ——— last past, she was
delivered of a [*male or female*] bastard child, in the town-
ship of ———, and that C. D. of ———, is the father of
such child, and that such child is now living and charge-
able to the township of ———, and the overseers of the
poor of such township have applied to us to issue this
warrant;

These are to command you that you bring the said A.
B. and the said C. D. respectively before us at the ———
of ———, in the said county, on the ——— day of ———, at
the hour of ———, to be by us further examined, that we
may make such order thereon as to right may appertain,
and also that you do personally attend at the same time
and place.

Witness our hands and seals this ——— day of ———,
A. D. 18—.

E. F., J. P. (seal.)
L. M., J. P. (seal.)

Order of filiation.

County of ———, ss.

The order of E. F. and L. M., esquires, two justices for
the said county, concerning a [*male or female*] bastard child
lately born in the township of ———, of A. B.

Whereas upon the oath of the said A. B. it hath appeared
unto us that on the ——— day of ——— last past, she was
delivered of a [*male or female*] bastard child in the township
of ———, and that such child is now chargeable to the
township of ———, and likely so to continue, and that
C. D. of ——— is the father of such child.

And whereas the said C. D. hath been brought before
us by our warrant [*or "hath refused to appear" as the case*

CHAP. 91. *may be*] to answer the premises, but hath not shewn sufficient cause why he shall not be deemed to be the father of the child;

Wherefore upon an investigation of the matter as well upon the oath of the said A. B. as otherwise, we hereby adjudge the said C. D. to be the father of such child, and thereupon we order as well for the relief of the township of ——— as for the sustenance of such child, that the said C. D. shall forthwith, upon notice to him given of this our order, pay to the overseers of the poor for the said township the sum of ——— towards the lying in of the said A. B. and the maintenance of such child up to this date.

And further that the said C. D. shall pay to the overseers of the poor of the said township for the time being the sum of ——— weekly from the date hereof during so long time as the child shall remain chargeable to such township, towards the maintenance of such child. And we order that the said A. B. shall also pay to the overseers of the poor of the township the sum of ——— weekly so long as the child shall be chargeable to the township in case she shall not herself take care of the child. Given under our hands and seals, this ——— day of ———, A. D. 18—,

E. F., J. P. (seal.)
L. M., J. P. (seal.)

Commitment to be endorsed upon the order of filiation.

County of ——— ss.

Whereas C. D. within named, hath refused to comply with the within order or to give sufficient bonds to the overseers of the poor to indemnify the township of ——— in the said county, in respect of the support of the child within referred to, we hereby direct the high sheriff of the county or the jailer to receive the said C. D. and commit him to jail, there to remain in close confinement for the space of ——— or until he shall have given such bond, or shall otherwise be removed according to law. Witness our hands and seals, this ——— day of ——— A. D. 18—.

E. F., J. P. (seal.)
L. M., J. P. (seal.)

Warrant to apprehend reputed father after order of filiation, where he shall have avoided service of previous warrant.

County of ——— ss.

To any of the constables of the said county :

Whereas a warrant was issued by us to bring before us on the ——— day of ———, A. B. of ———, and C. D. of ———, which said A. B. appeared under the said warrant, but the said C. D. could not be found; and on hearing the evidence then adduced before us we did make an order of filiation in the absence of the said C. D., but he the said

C. D. has not complied therewith : these are therefore to CHAP. 91.
 command you to bring the said C. D. before us at the
 ———, on the ——— day of ———, at ——— o'clock, that he
 may be examined by us touching such order of filiation,
 and shew cause why he should not comply with such
 order, and enter into bonds for the performance thereof,
 and otherwise to be dealt with according to law. Given
 under our hands and seals this ——— day of ———, A. D. 18—.

E. F., J. P. (seal.)

L. M., J. P. (seal.)

The form of commitment the same as that under the
 order of filiation where the father shall have been present.

Bond to abide and fulfil the order of filiation.

Know all men by these presents that we, C. D., of ———,
 in the county of ———, and G. H., of ———, in the same
 county ———, are held and firmly bound unto the over-
 seers of the poor for the township of ———, in the said
 county, in ——— dollars, to be paid to the said overseers of
 the poor and their successors in office or their certain
 attorney, executors, administrators and assigns, for which
 payment to be well and truly made we bind ourselves and
 each of us by himself, our and each of our heirs, execu-
 tors and administrators, firmly by these presents, sealed
 with our seals. Dated this ——— day of ———, A. D. 18—.
 Whereas by an order of filiation made by ——— and
 ———, esquires, two justices of the county aforesaid, in
 the matter of a bastard child, lately begotten on A. B., the
 said C. D. hath been adjudged to be the father of such
 child, and to obey such order of filiation. Now the con-
 dition of this obligation is such that if the said C. D., his
 executors or administrators, do well and truly obey such
 order of filiation, then this obligation shall become void.

Signed, sealed and delivered	C. D. (seal.)
in presence of	G. H. (seal.)
J. K.	

*The like, where an appeal from such order shall have been made
 to the supreme court.*

Know all men by these presents that we, C. D., of ———,
 in the county of ———, and G. H., of ———, in the same
 county ———, are held and firmly bound unto the over-
 seers of the poor for the township of ———, in the said
 county, in ——— dollars, to be paid to the said overseers of
 the poor and their successors in office for the time being,
 of the said township of ———, or their certain attorney,
 executors, administrators and assigns, for which payment
 to be well and truly made we bind ourselves and each of
 us by himself, our and each of our heirs, executors and
 administrators, firmly by these presents, sealed with our
 seals. Dated this ——— day of ———, A. D. 18—.

CHAP. 92. Whereas by an order of filiation duly made by ——— and ———, esquires, justices of the peace for the county aforesaid, in the matter of a bastard child, lately begotten of A. B., the said C. D. hath been adjudged to be the father of such child, and to obey an order of filiation made in that behalf, from which order the said C. D. hath appealed to the supreme court [*or sessions at Halifax.*] Now the condition of this obligation is such, that in case such order shall be confirmed by the court, then if the said C. D., his executors or administrators, do pay all costs and charges which may be legally incurred by the overseers of the poor for the said township, in consequence of such appeal, and also do obey such order so confirmed, then this obligation shall become void.

Signed sealed and delivered }	C. D. (seal.)
in the presence of }	G. H. (seal.)
J. K.	

TITLE XXIV.

OF CERTAIN BIRDS AND ANIMALS.

1865 By Cap. 1. Sec 2. Chapter 35 of the Act of 1861. is here removed -

CHAPTER 92.

OF THE PRESERVATION OF USEFUL BIRDS AND ANIMALS.

Partridge, snipe and woodcock not to be killed between first of March and first of September.

1. No person shall take or kill any partridge, snipe or woodcock, or shall sell, buy, or have the same in his possession between the first of March and the first of September in any year.

Fine for offence

2. Every offender shall forfeit two dollars for each offence.

Moose and cariboo—restrictions as to number killed.

3. No one person during any one year or season shall kill more than five moose or cariboo, nor shall any party of huntsmen or number of persons together at any one hunt kill more than five moose or cariboo, nor shall any person knowingly kill any cow moose between the first day of January and the first day of September in any year, and no person shall set traps or snares for catching moose or cariboo.

No cow moose to be killed between first of January and first of September.

No traps or snares allowed.

None to be killed between fifteenth February and first September.

4. No person shall take or kill any moose or cariboo between the fifteenth day of February and the first day of September in any year, nor shall any person buy or have the same in his possession between the first day of March and the first day of September in any year.

Flesh to be carried out of woods; within what time.

5. Any person or party of huntsmen who may kill moose or cariboo shall carry the flesh thereof out of the

woods within three days after killing the animal during the months of September and October, and within fourteen days thereafter during the months of November, December, January and February. CHAP. 92.

6. Any person violating either of the three next preceding sections shall be liable to and on conviction shall pay a sum not to exceed twenty dollars and costs for each offence, to be recovered in the name of any prosecutor in a summary manner before two justices of the peace, and when recovered to be paid one half to the prosecutor and the other half to the county treasurer for the use of the county; and in default of payment the offender shall be imprisoned in the county jail for a period not to exceed five days. Penalty for violation of preceding sections
How recovered.

7. It shall not be lawful for any person to take or kill within this province any pheasant, or to buy, sell or have in his possession any dead pheasant that has been so taken or killed. Imprisonment.
Pheasants not to be killed, sold, &c.

8. Any dead pheasant found in the possession of any person within this province shall be presumed to have been taken or killed by such person contrary to this chapter until proof to the contrary be given by such person. Presumption of guilt.

9. No person shall take or kill the otter, the mink or the musquash, between the first day of May and the first day of November in any year, and no person shall take or kill any other animal only valuable for its fur between the fifteenth day of March and the fifteenth day of November in any year. Otter, mink, &c when not to be killed.

10. Every person offending against the three next preceding sections shall for each such offence forfeit a sum not exceeding eight dollars; to be recovered in the same manner in which similar amounts are now by law recoverable, and to be appropriated to the use of the prosecutor. Penalty for violation of three preceding sections.
How recovered

11. No person shall set any snare or trap for the destruction of moose; and the sessions may make orders for the preservation of moose and for preventing the setting of snares or traps for catching them, and may affix penalties not to exceed twenty dollars for the breach of such orders respectively. Sessions may make orders for preservation of moose, and affix penalties for breach.

12. Any person may destroy any snare made or existing in violation of such orders. Snare may be destroyed.

13. If the penalties incurred under the first and second sections be not paid with costs, the offender shall be committed to jail, there to remain one day for every one dollar thereof or until the amount be paid. Imprisonment where fines are not paid.

14. Any person who shall keep a dog known to kill or accustomed to worry sheep or lambs, after notice, shall pay two dollars to the owner for every sheep or lamb killed, and shall also forfeit four dollars for each offence. Fines for keeping dogs known to kill sheep.

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Oysters placed in beds not to be disturbed.

Penalty.

Recovery of penalty.

Sessions to regulate taking of oysters; penalties.

Proviso.

Penalties; how recovered.

15. It shall not be lawful for any person to take any oysters from beds where they have been placed for propagation, or to injure or destroy them or wilfully obstruct their growth therein in any part of this province; and every person who shall so take, injure, destroy or obstruct the same, shall forfeit and pay for each offence two dollars, in addition to the sum of two dollars for every bushel of oysters including the shells, so taken, injured or destroyed.

16. The penalty imposed under the preceding section may be recovered by any person who will sue for the same in the same manner as private debts of a similar amount are now recoverable, and shall be appropriated to the use of the prosecutor.

17. The sessions may make regulations respecting the taking of oysters in any of the bays, creeks or rivers of this province, and may impose penalties for the breach of such regulations—provided such penalties do not exceed four dollars for each offence.

18. The penalties imposed for breach of such regulations may be sued for as private debts of a similar nature by any person who may sue for the same, and when recovered shall be appropriated to the use of the prosecutor.

CHAPTER 93.

OF THE DESTRUCTION OF NOXIOUS ANIMALS.

Sessions may appoint rewards for killing bears, loup-cerviers, wild cats and wolves

Preliminary proceedings for obtaining provincial bounty for killing a wolf.

Justice's duty on application; his certificate.

1. The sessions may establish rules and appoint rewards for encouraging the killing of bears, loup-cerviers, wild cats and wolves; and such rewards shall be a county charge.

2. Every person killing a wolf within the province and intending to claim a bounty therefor, shall produce the head of the animal with the skin and ears entire, to a justice of the peace of the county where taken, and shall make oath of the fact in writing, stating the time and place where such wolf was taken, and shall submit to any further examination required by such justice; but no bounty shall be allowed for any wolf taken out of the womb of the mother.

3. If the justice shall be satisfied of the truth of the statement, he shall cut off and burn the ears and scalp of such wolf, and deliver to the person applying, a certificate of the facts annexing thereto the affidavit taken, and shall number the certificates issued by him each year and mark the number and year thereon.

4. Upon the certificate with the affidavit annexed being transmitted to the office of the provincial secretary, a bounty of twenty dollars shall be paid out of the treasury to the party entitled.

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Bounty of twenty dollars allowed from the treasury.

TITLE XXV.

OF THE FISHERIES.

CHAPTER 94.

Amended 1866.
Cap 35.

OF THE COAST AND DEEP SEA FISHERIES.

1. Officers of the colonial revenue, sheriffs, magistrates and any other person duly commissioned for that purpose, may go on board any vessel or boat within any harbor in the province, or hovering within three marine miles of any of the coasts or harbors thereof, and stay on board so long as she may remain within such place or distance.

Revenue officers may board vessels hovering within three miles of the coast.

2. If such vessel or boat be bound elsewhere and shall continue within such harbor or so hovering for twenty-four hours after the master shall have been required to depart, any one of the officers above mentioned may bring such vessel or boat into port and search her cargo, and also examine the master upon oath touching the cargo and voyage; and if the master or person in command shall not truly answer the questions demanded of him in such examination he shall forfeit four hundred dollars; and if there be any prohibited goods on board, then such vessel or boat, and the cargo thereof, shall be forfeited.

Proceedings where the master bound elsewhere refuses on notice to depart.

3. If the vessel or boat shall be foreign and not navigated according to the laws of Great Britain and Ireland, and shall have been found fishing or preparing to fish, or to have been fishing within three marine miles of such coasts or harbors, such vessel or boat and the cargo shall be forfeited.

Foreign vessels fishing or preparing to fish, and their cargoes, forfeited.

4. All goods, vessels and boats liable to forfeiture may be seized and secured by any of such officers or persons so commissioned; and every person opposing them or any one aiding such opposition shall forfeit eight hundred dollars.

Vessels and goods forfeited liable to seizure; penalty for obstructing officers.

5. Goods, vessels and boats, seized as liable to forfeiture under this chapter shall be forthwith delivered into the custody of the officers of the colonial revenue next to the place where seized, to be secured and kept as other vessels, boats and goods seized, are directed to be secured and kept by law.

Custody of vessels and goods seized.

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Condemned vessels and goods, how disposed of, and the proceeds, how applied.

6. All goods, vessels and boats condemned as forfeited under this chapter shall, by direction of the principal officer of the colonial revenue where the seizure shall have been secured, be sold at public auction, and the proceeds of such sale shall be applied as follows: the amount chargeable for the custody of the property seized shall first be deducted and paid over for that service, one-half of the remainder shall be paid to the officer or person seizing the same without deduction, and the other half, after first deducting therefrom all costs incurred, shall be paid into the treasury of the province; but the board of revenue may nevertheless direct that any vessel, boat or goods, seized and forfeited, shall be destroyed or reserved for the public service.

Penalties and forfeitures, how prosecuted.

Vessels and goods to be re-delivered on security.

7. All penalties or forfeitures hereunder shall be prosecuted and recovered in the court of vice admiralty.

8. If any goods, vessel or boat shall be seized as forfeited under this chapter, the judge of the vice admiralty with the consent of the persons seizing the same may order re-delivery thereof, on security by bond to be made by the party with two sureties to the use of her majesty. In case the property shall be condemned, the value thereof shall be paid into the court and distributed as above directed.

Suits, how brought and prosecuted; oral evidence admissible as authority of seizing officers.

9. All suits for the recovery of penalties or forfeitures shall be in the name of her majesty, and shall be prosecuted by the advocate general, or in case of his absence by the solicitor general. If a dispute arise whether any person is authorized to seize under this chapter, oral evidence may be heard thereupon.

Burden of proof in cases of seizure to rest with claimant.

10. If any seizure take place under this chapter and a dispute arise, the proof touching the illegality thereof shall be upon the owner or claimant.

Claims of property seized to be under oath.

11. No claim to anything seized under this chapter and returned into the court of vice admiralty for adjudication, shall be admitted unless the claim be entered under oath, with the name of the owner, his residence and occupation, and the description of the property claimed; which oath shall be made by the owner, his attorney or agent, and to the best of his knowledge and belief.

Security to be given before claim entered.

12. No person shall enter a claim to anything seized under this chapter until security shall have been given in a penalty not exceeding two hundred and forty dollars to answer and pay costs occasioned by such claim; and in default of such security the things seized shall be adjudged forfeited and shall be condemned.

Month's notice to officer before action.

13. No writ shall be sued out against any officer or other person authorized to seize under this chapter for anything done thereunder until one month after notice in writing, delivered to him or left at his usual place of abode by the person intending to sue out such writ, his attorney

or agent; in which notice shall be contained the cause of action, the name and place of abode of the person who is to bring the action, and of his attorney or agent; and no evidence of any cause of action shall be produced except such as shall be contained in such notice. CHAP. 94.

14. Every such action shall be brought within three months after the cause thereof has arisen.

Limitation of action against seizing officers.

15. If on any information or suit brought to trial under this chapter on account of any seizure, judgment shall be given for the claimant, and the judge or court shall certify on the record that there was probable cause of seizure, the claimant shall not recover costs, nor shall the person who made the seizure be liable to any indictment or suit on account thereof. And if any suit or prosecution be brought against any person on account of such seizure, and judgment shall be given against him, and the judge or court shall certify that there was probable cause for the seizure, then the plaintiff, besides the thing seized or its value, shall not recover more than three and a half cents damages nor any costs of suit, nor shall the defendant be fined more than twenty cents.

Certificate of probable cause of seizure shall prevent the recovery of costs.

16. The seizing officer may within one month after notice of action received, tender amends to the party complaining or his attorney or agent, and plead such tender.

Amends may be tendered within one month.

17. All actions for the recovery of penalties or forfeitures imposed by this chapter must be commenced within three years after the offence committed.

Limitation of actions for penalties, &c.

18. No appeal shall be prosecuted from any decree or sentence of any court in this province, touching any penalty or forfeiture imposed hereby, unless the inhibition be applied for and decreed within twelve months from the decree or sentence being pronounced.

Appeals, within what time to be prosecuted.

19. All coasting vessels under sixty tons burthen owned in this province and engaged in the coasting trade thereof, shall be furnished with a narrow piece of plank or iron affixed to the bottom of the keel and level therewith, extending aft at least six inches beyond the aperture between the stern post and rudder, and well secured on the keel. But this section shall not extend to vessels in which the main or false keel extends six inches beyond the aperture between the stern post and rudder.

Coasting vessels to have a narrow piece of plank or iron extending aft of the stern post.

20. Any owner or master of a coasting vessel not so furnished or built, running foul of any net set off the harbors, bays and rivers of the coast, shall upon due proof thereof forfeit twenty dollars, to be recovered by the party injured to his own use as a private debt; leaving to the party aggrieved, nevertheless, his rights at common law for any further damage.

Forfeiture for destroying nets where coasters are not so provided.

21. In this chapter "vessels" shall include ships; and "harbors" shall include ports, bays and creeks.

Definition of terms.

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Suspension of
first eighteen
sections.

22. The first eighteen sections are suspended as regards citizens and inhabitants of the United States of America, and shall continue so suspended and not in force so long as the treaty between her majesty and that country, signed on the fifth day of June, 1854, shall continue and be in force.

Agreement to
be entered into
between master
and crew.

23. The master of any vessel registered and belonging to this province, and bound from any port therein, to be employed in the deep sea fishery, shall before proceeding on such fishing voyage enter into an agreement in writing with every person on board, apprentices excepted, which agreement shall express whether the same is to continue for one voyage or for the fishing season; and shall also express that the fish or the proceeds of such fishing voyage or voyages which may appertain to the crew of such vessel, shall be divided among them in proportion to the quantity or number of fish which they may respectively have caught; which agreement in addition to the signatures of the master and crew shall be countersigned by the owner of such fishing vessel, or his agent, and shall be as nearly as possible in the form given in the annexed schedule.

Terms of
agreement.

Penalties for
desertion.

24. Any person having engaged for a voyage or for the fishing season, as before provided, who shall while the agreement therefor continues in force, desert or absent himself from the vessel in which he shipped, without leave of the master, shall be liable to the same penalties and forfeitures imposed on the like offences under chapter seventy-five; and every master of a fishing vessel taking any person on a deep sea voyage without entering into the before required agreement, shall be liable to the penalty imposed on that offence by the same chapter.

Schedule in this chapter referred to.

Form of agree-
ment.

An agreement made in pursuance of chapter ninety-four of an act of the general assembly of Nova Scotia, passed in the twenty-seventh year of the reign of her majesty queen Victoria, entitled "an act for revising and consolidating the general statutes of Nova Scotia," between ———, master of the ship ———, of the port of ———, of the burthen of ——— tons, and the several persons whose names are subscribed hereto.

It is agreed by and on the part of the said persons, and they severally hereby engage to serve on board said ship in the capacities set opposite their respective names, on a fishing voyage from the port ——— to ———; [*here the intended voyage is to be described, and the duration of the same, and the nature of the same as nearly as can be done, and if the same is to continue for the fishing season,*] and back to the port of ———; and the said crew agree to conduct themselves in an orderly, faithful, honest, careful and sober manner, and to be at all times diligent in their respective duties and stations, and to be obedient to the lawful commands of the

master in every thing relating to the said ship, and the materials, stores and cargo thereof; in consideration of which services to be duly, honestly, faithfully and carefully performed, the said master doth hereby promise and agree with the said crew; [*here insert the particular agreement with reference to the division of the fish among the shareholders at end of voyage.*] In witness whereof the said parties have hereto subscribed their names on the days against their respective signatures mentioned.

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Place and time of entry.			Men's name.	Age.	Place of birth.	Quality.	Am't of shares.	Sureties.	Witness to execution.
Day.	Month.	Year.							

Amended in 1865, Cap. 38

CHAPTER 95.

Amended 1866, Cap. 3

OF RIVER FISHERIES.

1. Hereafter no salmon shall be taken in any of the rivers of this province westward of the harbor of Halifax between the thirty-first day of July and the first day of March; nor in any river running into the Bay of Fundy, nor in any river in the Island of Cape Breton, nor in any river to the eastward of Halifax harbor, between the fifteenth day of August and the first day of March, except in salt water below low water mark, and in salt water not later than the twentieth of October. Any person taking any salmon in any of the rivers of this province within the times specified shall be liable to a penalty not exceeding forty dollars for every salmon taken by him.
2. The sessions shall annually appoint such and so many places on the rivers and streams as may be attended with the least inconvenience to the owners of the soil, or the rivers, as resorts for the purpose of taking fish; but the same and the enactments herein contained shall not extend to any species of fish taken from the sea except salmon, bass, shad, alewives, gaspercaux, trout and small mackerel.
3. In cases where a river shall be the dividing line between two counties the orders and regulations of the sessions in each county shall have force and effect only to
- Time for taking salmon.
- Penalty.
- Fisheries on rivers running through private lands to be regulated by sessions.
- Sessions' orders to extend to centre of channel of river dividing counties.

CHAP. 95. the centre of the channel of the river being such dividing line.

Sessions to make orders for setting of nets, erecting of wears, &c.

Penalties.

Bag nets not allowed.

Time when nets shall not be set.

Spearing or sweeping forbidden.

Nets, how set.

Not to be within one eighth of a mile from another, nor within one eighth of a mile from mill, &c.

Not to extend more than one third across river.

Penalty for violation of last three sections. Forfeiture: trial of offenders; appeal.

Nets illegally set may be destroyed.

4. The sessions shall from time to time make orders for the setting and drifting of nets, the erecting and placing of wears, and generally for the conducting of fisheries in all the bays, harbors, rivers, streams or creeks, or on the shores thereof, to be enforced by penalties not exceeding forty dollars for the breach of any such order.

5. No bag nets shall be used for the purpose of taking salmon within any river or harbor, nor within a mile from the mouth of any river, and no nets shall be set or placed or allowed to remain set or placed from one hour before sunset on Saturday night until an hour after sunrise on Monday morning.

6. No person shall by spearing or sweeping with net or seine take or attempt to take any salmon in any river, stream, lake or water course; and nets for the taking of salmon or any other fish shall be set and placed only on one side of such river, stream, lake or watercourse.

7. No stake, seine, wear, net or other contrivance for taking fish, shall be set or placed within one-eighth of a mile from where some other stake, seine, wear, net or other contrivance for taking fish is previously set or placed, nor ~~within one-eighth of a mile~~ next below or above any mill or dam erected across or partially across any such river, stream or watercourse; and no seine, net, or other contrivance for taking fish shall extend more than one-third of the distance in a straight line across such river, stream or watercourse.

8. Any person who shall violate any provision of the last three sections shall forfeit a sum not exceeding forty dollars; and all spears, implements, canoes, boats, nets, seines, wears and other contrivances used or employed in, about or preparatory to the taking of salmon or any other fish contrary to the preceding sections, or to any order of sessions made or to be made thereunder, shall be liable to forfeiture, and may be seized by any person and detained until the trial of the offender, when they may be declared forfeited and become the property of the person prosecuting; if, however, upon appeal from the judgment of the justices the owner or possessor of the articles so declared forfeited shall give sufficient security by bond with sureties to pay the prosecutor the value thereof and the amount of any penalty that may have been imposed with the costs then incurred and thereafter to be incurred in case the judgment appealed from shall be confirmed, then such owner or possessor shall be entitled to their immediate restoration.

9. Any person finding a net, seine or wear set or placed contrary to the provisions of this chapter or of such order of sessions may destroy the same—provided nevertheless

that no person shall be allowed in any action, indictment CHAP. 95.
or other proceeding against him to justify the destruction
of or injury to any net, seine or wear, under the authority
of this section, unless such person shall within one week
after he shall have done any such act post up in a con-
spicuous place in the neighbourhood, and also file in the
office of a neighbouring justice of the peace, a notice
signed by him, acknowledging the act and stating the
time and place of doing the same, and also the address,
addition and place of residence of the party subscribing
the same.

10. Every person discovered at night with a spear and
torch or a torch only in or about any river, stream, lake or
watercourse above the rise and fall of the tide, either in a
boat or canoe or otherwise, and apparently equipped for
taking or spearing salmon, shall be considered in the act
of spearing salmon, and the burthen of disproving the
same shall be on the party so discovered. Persons equip-
ped by night
for fishing to be
considered in
the act of
fishing.

11. The owner or the occupier of any mill to which
any dam, lock or obstruction made or to be made on or
across any river, resorted to by salmon or gaspereaux, is
appurtenant, who shall not during such periods while the
fish are passing up from and returning to the sea, as shall
be prescribed by the regulations of sessions, or in case
there are no regulations on the subject as shall be fixed by
the river inspector, when no such regulation shall be
made by the sessions or river inspector, then within the
period prescribed in the first section of this chapter, have
and keep open a waste gate or slope sufficient to allow
such fish to pass and repass, shall be liable to a penalty not
exceeding forty dollars. Owner of mill
to keep open
waste gate, &c.
*Repealed
Bills, 1880
Sec 5
See
Regulation
1880, 1881
Penalty.*

12. When such owner or occupier having a sufficient
waste gate or slope shall keep the same shut or otherwise
impede the passage of such fish during such periods, he
shall be liable to a penalty not exceeding forty dollars for
every time he shall close the said passage. Penalty for
closing passage

13. When such owner shall have had ten days notice
in writing from the river inspector or any justice of the
peace of the want or insufficiency of such waste gate or
slope, and shall have for that space of time neglected or
refused to construct such waste gate or slope, he shall be
liable to a penalty of one hundred dollars, and if he shall
neglect or refuse to construct such waste gate or slope for
ten days after such penalty shall have been inflicted the
justices inflicting such penalty or any judge of the supreme
court may upon sufficient proof of such neglect or refusal
order the sheriff of the county to prostrate and wholly
destroy the said milldam, and the expenses attendant upon
such application and of the removal of the said dam shall
be taxed by the said justices or by a judge, who may direct
an execution to issue therefor against the said owner. Penalty for re-
fusing to con-
struct gates, &c.

Upon continued
refusal mill-
dam may be
destroyed.

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Sessions may
declare what
rivers exempt.

Sessions to ap-
point inspectors

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Salary.

To be sworn.

Duties of, &c.

Penalty for neg-
lecting to be
sworn.

For neglect of
duty.

Stop gates to be
made in dams.

Prosecutions
for penalties;
how had, &c.

Process to state
complaint.

14. The sessions of each county shall at the first meeting after the passing of this chapter by a memorandum in writing, declare specifically the rivers and streams within the county to which the provisions of this chapter shall not apply.

15. The grand jury in each county shall present and the sessions shall appoint in the same manner as county and township officers are appointed, for each river or part of a river which the sessions shall make into a separate district or jurisdiction, an officer to be called inspector of river fisheries, to be paid such salary as the grand jury and sessions may allow, who shall be sworn into office as other township officers are sworn, and who shall be liable and bound to protect the fisheries and carry out the provisions of this chapter on the river or stream for which he is so appointed.

16. Any river inspector neglecting to be sworn into office on receiving notice of his appointment shall be liable to a penalty of ten dollars; and any such river inspector neglecting his duty after being sworn into office shall be liable to a penalty of forty dollars.

17. For the protection of the young fish coming down the rivers of the province in the fall of the year, sufficient stop gates shall be made in all dams and obstructions across the rivers sufficient for such young fish to pass through.

18. All prosecutions for penalties under this chapter shall be had either before two justices of the peace or before a judge of the supreme court as a summary suit, and any person may prosecute for any violation of this chapter or of any order of sessions made thereunder, and the penalties when recovered shall go to the prosecutor.

19. Where proceedings are before two justices the following form of summons may be used, but any process which shall substantially state the violation complained of shall be sufficient.

Form of summons.

To any of the constables ———.

Summons.

You are hereby commanded to summon A. B. of ———, in the county of ———, to appear before us at ———, on the ——— day of ——— next, to answer to the suit of C. D. who says that the said A. B. hath violated the provisions of the acts made for the protection of the river fisheries in not providing a sufficient waste gate or slope in his milldam, or in not keeping the waste gate of his milldam open, or in allowing the waste gate or slope of his milldam to be so obstructed as to prevent the free passage of fish in unlawfully setting nets, wears or seines, or in spearing salmon.

Witness our hands this ——— day of ———, A. D. 18—.

E. F. (seal.)

G. H. (seal.)

The conviction may be in the following form:—"The CHAP. 96.
 within named A. B. having been duly summoned under Conviction.
 the annexed writ, and having been duly convicted of hav-
 ing violated the chapter of the revised statutes "of river
 fisheries," as therein mentioned, we hereby give judgment
 for the plaintiff for the sum of ——— with his costs.

E. F. (seal.)

G. H. (seal.)

TITLE XXVI.

CHAPTER 96.

Amended 1865

OF THE ENCOURAGEMENT OF AGRICULTURE.

1. The governor in council shall appoint a central board of agriculture, consisting of sixteen persons, of whom the superintendent of education and principal of the normal school shall be members ex officio, the remainder shall be selected: four from the city and county of Halifax, and two from each of the five rural districts mentioned in schedule B. Seven of such board shall be a quorum, and they shall be a corporate body under the name of the board of agriculture. Central Board
of agriculture;
how appointed.

2. The first meeting of the board shall be held at such time and place as the governor in council shall direct, when they shall elect a president, vice president, secretary and treasurer. First meeting;
when held.
Election of offi-
cers.

3. There shall be held in each year two general meetings of the board, one during the sitting of the legislature in the month of March and the other in the month of October, of which meetings at least ten days notice shall be given. Special meetings may be called by the secretary at the instance of the president or upon the written request of three members. Two general
meetings, when
held.

4. One of the members from each of such rural districts and two from district number one shall annually retire and cease to be members of the board, unless re-elected as herein provided; but members liable to retire may continue to exercise their functions until their successors shall have been duly appointed. Retirement of
members.

5. At the general meeting in October, 1865, the board shall determine by ballot the member in each of the several rural districts, and also the two members from district number one, who shall first retire; and in each succeeding year they shall go out by rotation. How deter-
mined.

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Agricultural societies to nominate a member of board in place of retiring member.

Vacancies, how filled.

Where votes equal board to elect by ballot.

Vacancies by death, and how filled.

Members to be paid actual expenses only.

Duties of board
To form county societies.

To receive reports.

To publish and distribute journals.

To obtain new stock, grain, &c., for distribution.

To hold a general provincial exhibition at least every third year.

6. The several agricultural societies in each of the five rural districts shall at their general meetings in December nominate one person to be a member of the board in place of the retiring member for the district. The secretary of the society shall forthwith transmit the name of the person so nominated by the greatest number of societies in the district, and the person so nominated shall be a member of the board in place of the retiring member. The vacancies in district number one shall be filled up by the societies therein nominating one member as in other districts, and the governor in council shall fill up the other.

7. In case of an equality of votes for any number of the persons so nominated the board shall determine by ballot who of the number shall be the member.

8. Vacancies happening at any time through death, resignation or otherwise, may be filled up by the governor in council.

9. The board shall not pay or allow any sum to a member thereof for acting as such member except the amount of his actual and necessary expenses in attending its regular meetings.

10. It shall be the duty of the board—

I. To take measures for the formation of county or district societies and for infusing new vigor and efficiency into those already in existence.

II. To receive the accounts and reports of such societies, and before granting the certificates hereinafter mentioned to entitle them to participate in the provincial grant, to see that they have complied with the provisions of this chapter.

III. To publish a quarterly or semi-annual journal for the diffusion of agricultural and horticultural information adapted to the condition and circumstances of the country, and to cause the same to be distributed as generally as possible.

IV. To take measures to obtain from other countries animals of new or improved breeds, new varieties of grains, seeds, vegetables, plants or other agricultural productions for general and equitable distribution throughout the several counties, and to adopt every measure in their power generally to promote improvement in the agriculture and horticulture of the province.

V. To hold every third year or oftener, should the board deem it advisable, in some central and suitable locality, a general provincial exhibition of agricultural and horticultural products, animals and domestic manufactures, and to fix the time, articles of competition, and list of prizes to be awarded, and the regulations under which such exhibitions shall be held, of which due notice shall be given at least twelve months before the same shall take

place and in holding the same, due regard shall be had to the just claims of the several counties. CHAP. 96.

11. The board may at any time appoint a person to inspect the books and accounts of any society in the province receiving government aid in connection with agriculture, and all officers of every such society whenever required so to do shall submit its books and accounts to such inspection and truly to the best of their knowledge answer all questions put to them in relation thereto, or to the funds of the society.

Board to appoint inspectors of societies.

12. For the purposes of this act the board shall be entitled to draw from the provincial treasury annually such sum not exceeding two thousand dollars, as the governor and council may authorize, out of which they may expend a sum not exceeding four hundred dollars for the salaries of their officers, and a further sum not exceeding fifty dollars for stationery and other incidental expenses, and they shall exhibit to the government for the information of the legislature every year an account of the expenditure of the same with proper vouchers, and a full report of their proceedings.

Board entitled to draw certain sum of money; application thereof and accounts.

13. Agricultural societies may be organized in each of the counties wherever forty persons or more shall become members thereof by signing a declaration in the form of schedule A to this chapter, and paying each not less than one dollar annually to the funds thereof, and a true copy of the said declaration shall within one month after the money has been so paid be transmitted to the secretary of the central board.

By Act 3 of 1880, c. 14, s. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

Agricultural societies; how organized.

Subscription.

14. When any society shall be so organized such society shall be entitled to draw annually from the treasury by warrant in favor of its president and on the certificate of the secretary of the central board, double the amount of the subscriptions so raised and paid; the payment of such subscription to be certified by the secretary of the society, but no county society shall be entitled to draw more than two hundred dollars in any one year.

When so organized entitled to draw from treasury double the amount of their subscriptions.

Not to exceed \$200 per annum.

15. In counties where more than one agricultural society exists the government allowance shall be given on the principle in section fourteen, not exceeding for any county the sum of two hundred and forty dollars in any one year, and the same shall be apportioned among such societies by the central board in a rateable proportion to the amount of the subscriptions raised and paid by each society for the year in which such allowance shall be claimed; no county to have more than four societies.

Government allowance; how apportioned.

16. In case of any difficulties arising as to the boundaries of any such societies the central board shall define the same.

Boundaries; how defined.

17. The object of such agricultural societies shall be to encourage and promote the introduction of improved stock,

Objects of agricultural societies.

CHAP. 96. seeds, fruit, roots, implements, methods of culture, drainage, orchard cultivation, and improvement in farm buildings and domestic manufactures, to hold shows and exhibitions, to award premiums for excellence, and to diffuse information concerning agriculture and horticulture; the funds of such societies, derived from the subscriptions of members or the public grant, shall not be expended for any object inconsistent with those above mentioned.

Annual meet-
ings of socie-
ties; when
held.

Election of offi-
cers.

First officers to
continue until
successors ap-
pointed.

Special meet-
ings.

May alter bye-
laws, &c.

Annual report;
when pre-
sented.

Forfeiture for
neglect.

County societies
to hold annual
show.

18. The annual meetings of the societies shall be held on the first Tuesday of December in each year, when they shall elect a president, vice president, secretary and treasurer, and not more than five directors, and they shall also at the same time nominate four persons to be members of the central board as required by section six.

19. The officers appointed at the formation of such societies shall until the election of their successors at the annual meeting exercise all the powers vested in the society by this chapter.

20. They shall hold special meetings pursuant to adjournment or on written notice from the secretary, which shall be given one week before the day appointed for such meeting, and at any such meeting five shall be a quorum.

21. The said officers and directors may at any such meeting make, alter and repeal bye-laws and rules for the management of such society, copies of which shall within one month thereafter be forwarded to the secretary of the central board for its approval.

22. The said officers and directors shall in addition to the ordinary duties of management, present at the annual meeting in December a report of the proceedings of the society during the year, in which shall be stated the names of all the members of the society, the amount paid by each, the names of all persons to whom premiums were awarded, with the name of the animal, article or thing in respect of which the same was granted, together with such remarks upon the agriculture of the county as they may be enabled to offer, and a statement of the receipts and disbursements of the society during the year, which report and statement if approved by the meeting shall be entered in the journal of the society, and a true copy thereof certified by the president and secretary to be correct shall be sent to the central board within one month thereafter.

23. If any society shall neglect to render such accounts and report it shall forfeit its claims to the provincial grant for the year next succeeding.

24. The county society where but one exists in a county, and the several societies where more than one is established therein, shall be requested to hold an annual show for the exhibition of agricultural and horticultural produce, farm stock, and articles of domestic manufacture, at which prizes shall be granted for the best specimens produced or

*24 amended
15 Cap. 20.*

farm culture, and such shows shall be held at such time and place and under such regulations as the majority of the officers and directors of the several county societies may determine. CHAP. 96.

25. If the officers and directors of the agricultural society of any county or part of a county consider that any other system might advantageously be substituted for that of shows, and that the sum allotted to such society might be better applied in the importation of stock or to any other purpose for the improvement of agriculture, in such case they may so apply the said sum, provided notice thereof has been given to the board of agriculture and its approval of such appropriation obtained. Other system may be adopted in place of show.

26. The provisions of this chapter shall extend to all agricultural societies at present in existence. Application of chapter,

SCHEDULES.

A.

We, whose names are hereunto subscribed, agree to form ourselves into a society under the provisions of the chapter of the revised statutes, "of the encouragement of agriculture," to be named the —— agricultural society in the county of ——; and we severally agree to pay to the treasurer of said society towards the funds thereof annually the sums set opposite our respective names.

Names of subscribers.	Sums subscribed.
A. B.	\$
C. D.	

B.

The city and county of Halifax shall comprise district number one.

District number two shall include the counties of Kings, Annapolis and Digby.

District number three shall include the counties of Lunenburg, Queens, Shelburne and Yarmouth.

District number four shall include the counties of Hants, Colchester and Cumberland.

District number five shall include the counties of Picou, Antigonish and Guysborough.

District number six shall include the counties of Cape Breton, Richmond, Inverness and Victoria,

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TITLE XXVII.

OF CERTAIN MUNICIPAL REGULATIONS.

CHAPTER 97.

OF TRUSTEES OF PUBLIC PROPERTY.

Trustees of public property appointed by sessions; record to be kept; trustees a body corporate.

1. The grand jury in each county or district shall recommend six persons resident therein, out of whom the sessions shall appoint three to be trustees of public property; and the sessions upon the recommendation of the grand jury may remove them or any of them, and vacancies shall be supplied by the grand jury recommending double the number of persons necessary to supply the same, out of whom the sessions shall appoint the number required. The clerk of the peace shall keep a record of such appointments, removals and vacancies, and the dates thereof. Such trustees shall be a body corporate by the name of "the trustees of public property for the county [*or district*] of _____."

Lands and property vested in trustees.

2. All lands granted, conveyed, reserved or dedicated, or which may have been procured, or for twenty years before the passing of this chapter shall have been used for public purposes in the county or district, whether for the site of any court house, jail or lock-up house, or for the public purposes of the county or district generally, with the buildings and appurtenances thereon or thereto belonging, and all lands and buildings hereafter procured or given for the public purposes of the county or district generally, shall vest in such trustees on their appointment for the public uses for which the same may have been originally intended.

Lands to be leased subject to control of sessions.

3. All such lands and buildings shall be leased and managed by the trustees under and subject to the control of the sessions.

Leases limited to seven years.

4. No lease shall be made hereunder for a longer period than seven years.

Bye-laws, how made.

5. The trustees may make bye-laws for the better regulation of such lands and buildings and affix penalties for breach thereof; but no bye-law shall be in force until approved by the sessions and filed with the clerk of the peace.

Accounts of trustees to be rendered annually.

6. The trustees shall annually render their accounts in writing to the sessions to be by them audited, and when approved they shall be filed by the clerk of the peace.

Penalties and rents, how recovered.

7. Penalties incurred under the bye-laws and rents due to the trustees, may be recovered by them in like manner

as if they were private debts due them; and the trustees shall pay into the county treasury all monies that they may receive hereunder. CHAP. 98.

8. The expenses of the trustees in the execution of the trust, shall when approved by the sessions form a county charge. Expenses of trustees to form county charge.

9. Nothing herein contained shall affect any place of divine worship, burial ground, college, academy, school or any land thereto belonging, or any land belonging to any religious congregation or society, or any lands vested in the supervisors of public grounds under the chapter of revised statutes "of supervisors of public grounds," or shall deprive any person of any right lawfully acquired; nor shall anything herein contained affect any lands or buildings now vested in trustees, or the necessary control of the sheriff over the court house and jail. Lands and property exempted from the operation of this chapter.

10. The sessions in each county shall have power to appoint trustees of school lands in any township or district in this province where none are now appointed. Trustees of school lands, appointment of.

11. Whenever any vacancy shall occur by death or removal from the county, incompetency, or refusal to act of any trustees already appointed to take charge of any school lands in any township or district in this province, the sessions may appoint trustees to fill such vacancy who shall have the same power as the original trustees. Vacancies, how filled.

CHAPTER 98.

OF PUBLIC MARKETS.

1. Public markets where now by law established are confirmed, and upon the recommendation of the grand jury, the sessions may establish new public markets, and may procure and fit up a market house as directed in chapter forty-five, "of county assessments." Existing public markets confirmed; sessions may establish others.

2. The sessions may direct the days of the week and hours on which public markets shall be held, and may appoint keepers of the market who shall also act as clerks thereof, and shall be sworn into office and have the powers of constables so far as regards keeping order in the market, and shall be removable by the sessions. The sessions shall also establish the pay of such keepers and clerks, and fix the rates of stalls or standings in the markets, and make bye-laws for the regulation of markets and impose penalties for breaches thereof, not exceeding two dollars for every offence. The keepers and clerks shall bring actions for such penalties in their own names, and shall be competent witnesses to prove the offence. Sessions to appoint officers, make bye-laws, and generally control the markets.

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Rents and penalties—how applied.

Accounts to be rendered annually

3. The rent of the stalls and standings in the markets, together with the whole amount of the penalties recovered under the preceding section, shall be applied under the direction of the sessions to the repairs of the market house.

4. The keepers and clerks shall annually render their accounts in writing to the sessions, to be by them audited, and when approved they shall be filed by the clerk of the peace.

CHAPTER 99.

OF FIRES AND FIREWARDS.

Firewards, how appointed; to be sworn and have a staff as badge of office.

Limits of towns and places defined.

Firewards, their duties and powers at fires.

Penalty for disobedience of their orders.

Fine for breaking open buildings without proper authority.

1. The sessions shall annually appoint such numbers of the inhabitants of any town as may be deemed necessary to be firewards, who shall be sworn to the faithful discharge of their duties, and shall have a suitable staff assigned them as a badge of office.

2. The extent of any towns for the purpose of this chapter shall be confined to the limits within which the commissioners of streets have jurisdiction, but may be altered by the sessions; and the sessions may also divide the towns into different wards, and may appoint such limits where there are no commissioners of streets.

3. Upon the breaking out of a fire, the firewards, taking their badges with them, shall forthwith repair to the spot and use their utmost endeavours to extinguish and prevent the spreading of the fire, and to preserve and secure the property of the inhabitants, and may command the assistance of the inhabitants therein, and in removing property out of any building actually on fire or in danger thereof, and to appoint guards to secure and take care of the same, and may command assistance for the pulling down of buildings or for other services relating thereto to prevent the further spreading of the fire, and to suppress tumults and disorders, and due obedience shall be yielded unto them for those services, and generally at such fires; and for any disobedience of their orders information thereof shall within ten days next thereafter be given to a justice of the peace, and the offender shall be liable to a penalty not exceeding eight dollars.

4. No person shall at a fire break open any building or attempt to pull the same down, or order others so to do, unless orders therefor shall have been first given by the owner of the building, or as previously provided, and any person violating this provision shall for every offence forfeit a sum not exceeding twenty dollars.

5. The firewards shall from time to time report to the sessions what number of ladders, hooks, buckets, bags, chains, ropes, axes and saws are required for service at fires, and the probable expense thereof and of keeping the same in repair; and the sessions shall order such of them to be provided as they may deem necessary; but every fireward shall be at all times provided with two ladders with hooks, one of which ladders shall be at least twenty-four feet in length, and the other at least sixteen feet in length, one fire hook, two axes, one saw, twelve leather buckets, and twelve large bags, which shall be by the firewards deposited in the most convenient places in each district, and where, on the alarm of fire, the inhabitants of the district shall assemble and proceed under the direction of the firewards, with such of the implements as may be deemed necessary, to the place of danger.

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Duty of fire-
wards as re-
gards fire im-
plements.

6. The district of which each fireward shall have charge shall be numbered, and the implements in the last section mentioned shall be marked with the number of the district to which they belong, and within twenty-four hours after the extinguishing of any fire the different implements shall be delivered at their place of deposit; and if thereafter any of such implements shall be found in the possession of any person he shall forfeit a sum not exceeding eight dollars; and any person who shall use such implements except at a fire or on an alarm thereof shall forfeit a like sum.

Districts and
implements to
be numbered;
provision for
safety of imple-
ments.

7. The sessions may appoint such number of firemen for each town as they may deem necessary, who shall under the firewards have the charge of the fire implements hereinbefore mentioned, and shall be obliged to keep them in good order and fit for service; and upon an alarm of fire they shall at once repair to the place of deposit of such implements and bring the same to the place where the fire shall have been discovered, and shall then diligently use the same under the direction of the firewards, in such way as may be deemed most useful for extinguishing the fire.

Firemen, how
appointed;
their duties.

8. One of such firemen to be appointed by the firewards shall have the power of a fireward in commanding assistance in taking the fire-implements to or from any fire, and a like penalty shall attach for disobedience of his orders as of those of a fireward.

Fireman ap-
pointed by fire-
wards to have
power of fire-
ward.

9. The sessions may appoint so many fire constables as they may deem necessary, not exceeding six for each district, who shall be sworn into office, and shall at the time of fires, with suitable staves to be provided them, attend upon the firewards, and act under their directions in subduing the fire, keeping order and preventing thefts; and if any constable so appointed shall neglect to be sworn into office within a reasonable time after being notified of his appointment, or having been sworn in, shall neglect his duty, he shall forfeit a sum not exceeding eight dollars.

Fire constables,
how appointed;
their duties.

Penalty for
neglect.

CHAP. 99.

General sessions may assess for fire engines.

Property liable to assessment; assessors.

Collectors; payment, how enforced.

To be paid to county treasurer; action against collector.

Forfeiture for neglect of duty, recovery of.

Enginemen, how appointed; their duties.

Engine man appointed by firewards to have power of fireward.

Firemen and enginemen exempted from certain public duties.

Vacancies, how supplied.

Chimney sweepers, how appointed.

10. The general sessions for any county may hereafter assess upon a district to be by them defined such sum of money as they shall think necessary, to be applied in procuring a fire engine with hose, fire buckets and other necessary appurtenances for such district, and also such sums as may be required from time to time for keeping the same in repair; and such monies shall be assessed, levied and collected. Such monies shall be assessed upon houses and buildings and every description of insurable personal property within such district, by assessors to be appointed by such general sessions, at such times and in such proportions as such general sessions shall direct.

11. Such assessors shall appoint one or more collectors who shall collect such monies, and such monies shall be collected and payment thereof enforced in the same manner as county rates are collected and their payment enforced.

12. Such collectors shall pay over the monies by them collected to the county treasurer; and the county treasurer may maintain an action for money had and received against any of such collectors who shall not pay over the monies by him collected.

13. Any collector or assessor who shall neglect to perform the duties of his office shall forfeit a sum not exceeding forty dollars, to be recovered in the name of any person who will sue therefor, in the same manner and with the like costs as if it were a private debt due such person.

14. The sessions may from time to time appoint such number of enginemen as may be deemed necessary, who shall take charge of the fire engines and shall keep the same in good order and fit for service, and upon an alarm of fire they shall repair with their engines to the place where the fire shall have been discovered and work the same under the direction of the firewards.

15. One of the enginemen, to be appointed by the firewards, shall have the power of a fireward to command any necessary assistance in taking the engines to and from fires, and any person refusing to obey his orders therein shall be liable to the same fine as hereinbefore imposed for disobeying a fireward.

16. Firemen and enginemen shall be exempted from the performance of statute labor, except in respect of cattle and teams, and from serving on juries or in the office of constable; and these exemptions shall extend to persons who shall have actually served as firemen or enginemen for a period of sixteen years, and shall have obtained a certificate of such service from the captain or lieutenant of the company, countersigned by the secretary.

17. Upon any vacancy among the firemen or engine men the same shall be at once reported by the captain to the sessions, that the vacancy may be supplied.

18. The firewards may nominate and license chimney sweepers, and if any person shall act in that capacity

without being so licensed, he may on a summary conviction thereof before a justice of the peace be imprisoned for a period not exceeding one month. CHAP. 99.

19. Licensed chimney sweepers shall enter into bonds with two sureties, to be approved by the firewards, for performing their duties during the term for which they may be appointed, and for conforming to the regulations of the firewards in reference to the sweeping of chimneys; and in case of neglect or refusal to perform their duties or to comply with such regulations they shall forfeit for every offence not less than one nor more than four dollars, and if the penalty shall not be paid within ten days after conviction, and no personal property whereon to levy can be found, the offender may be imprisoned for a period not exceeding ten days, or the bond may be put in suit for the payment of the penalty and costs.

Chimney sweepers to give bonds.

Penalty for neglect of duty.

20. The firewards may make regulations respecting the times and mode of sweeping chimneys; and if a fire shall happen in any building or chimney so as to create alarm or to endanger the neighboring buildings, and the occupants of the building where the fire occurs cannot make it appear that their chimneys have been swept according to such regulations by a licensed sweeper, they shall forfeit two dollars, to be recovered in the name of any fireward; and any fireward who shall be aware of the offence and shall not prosecute for the penalty within five days thereafter, shall forfeit twenty dollars.

Fines for neglect of regulations respecting sweeping of chimneys.

21. Any two firewards may demand admittance into any building wherein they have reason to believe there is any dangerous chimney, stove, stove-pipe or funnel, and if in their opinion the same shall be dangerous they shall order them to be altered or removed in such manner as they shall direct, and if their directions shall not be complied with the firewards shall cause such removal or alteration to be made at the expense of the occupants of the building; and if any person shall refuse admittance to the firewards while acting under this section, or shall not make the removal or alteration by them directed, he shall forfeit a sum not exceeding eight dollars, to be recovered together with the expenses of removal or alteration in the name of the firewards or any of them, and in default of payment the offender may be imprisoned for a period not exceeding ten days.

Power of firewards to enter buildings and make orders respecting dangerous chimneys.

Penalties for refusing admittance.

22. If any two firewards shall consider it proper to inspect the placing or situation of any combustible materials, they may demand admittance into any building or place for that purpose, and if they shall deem the same dangerous they shall direct the occupant of the building or place to remove such materials or alter the placing thereof, and if he shall neglect to obey them they may make the removal or alteration at his expense; and if any

Power to remove dangerous material

CHAP. 99. person shall refuse admission to the firewards while acting under this section, or shall not carry out their orders, he shall forfeit eight dollars in addition to the expense of carrying out the direction of the firewards, to be recovered in the name of the firewards or of any of them; and if the penalty and expenses shall not be paid with costs, the offender may be imprisoned for a period not exceeding ten days.

Penalties in-
curred, how
enforced.

Provisions re-
specting gun-
powder.

Penalties and
their enforce-
ment.

23. No person shall keep at any one time in any one place within the limits of the firewards, or in any vessel or boat for more than twelve hours after she has reached any wharf within such limits, more than twenty-five pounds of gunpowder; and if any person shall violate the provisions hereof he shall forfeit one dollar for every pound of such gunpowder over twenty-five pounds, to be recovered in the name of the firewards or any of them; but this provision shall not extend to any vessel or boat belonging to her majesty wherein gunpowder may be kept for public purposes; and all prosecutions hereunder shall be commenced within three months after the offence shall be committed.

Warrant to issue
and places
broken open to
search for dan-
gerous quanti-
ties of gunpow-
der; proceed-
ings thereunder

24. Any justice of the peace upon complaint on oath by a fireward that he has reasonable cause to suspect that dangerous quantities of gunpowder are kept in any place contrary to the provisions of the last section, may issue his warrant to search therefor in the day time; and if admittance under the warrant shall be refused, and such refusal shall be made appear on oath, the justice may grant a further warrant to break open the place where such gunpowder is supposed to be deposited; and if upon any search a greater quantity than twenty-five pounds of gunpowder shall be found, the fireward may seize and sell such excess at public auction, and the proceeds shall be applied for the purposes of this chapter.

Sessions to
make regula-
tions relative to
fires.

25. The sessions may make regulations to prevent the occurrence, increase or spreading of fires, and to prevent the unnecessary ringing of fire bells, or the destruction thereof or of their appurtenances, and shall have the management and control of the engine men and firemen, and may increase or diminish their numbers; and shall have general powers for the due carrying out of the provisions of this chapter, and may affix penalties for breach of any such regulations, not exceeding eight dollars.

Fine for injur-
ing public
wells, &c.

26. If any person shall wilfully destroy or injure any public well or pump or fire plug, or any engine or fire implements within the limits to which this chapter extends, he shall forfeit twenty dollars; and in default of payment, and no effects being found whereon to levy, may be imprisoned for not more than ten days.

Chairman of
firewards, how
appointed; of-
fice, duties, &c.

27. The firewards shall annually appoint a chairman who shall act as treasurer of the board, and shall submit

his accounts annually to the firewards to be audited and signed by them, and submitted to the sessions for examination and approval. CHAP. 100.

28. All penalties recovered hereunder shall be applied under the direction of the sessions towards the purchasing and keeping in repair of engines and fire implements and the sinking and keeping in repair of pumps and wells, and generally in carrying out the objects of this chapter; and the sessions may at any time direct new engines and fire implements to be procured for any town herein mentioned which may be within their jurisdiction, and new wells to be sunk and pumps placed therein; and the expenses thereof and of keeping them or those already in use in repair, and all such further sums as may be requisite for the purposes of this chapter, shall be assessed, levied and collected within the limits of the town where the expenses shall be incurred, in the same manner as poor rates are assessed, levied and collected, and shall be paid over to the county treasurer to be applied under the direction of the sessions for the purposes contemplated.

Application of penalties.

Fire implements, how provided and repaired.

Expenses, how levied and collected.

29. Whenever any building or property shall be injured or destroyed by fire and the cause or origin thereof shall not be known, the mayor of the city of Halifax within the city of Halifax, and the custos or any two justices of the peace in other parts of the province, shall cause an investigation to be made to ascertain the cause or origin of the fire, and the same shall take place before the mayor or two or more aldermen in the city of Halifax, or before two or more justices in other places, who shall have power to enforce the attendance of such persons to give evidence before them as they may require by summons or warrant under their hands and seals, and to examine them under oath; and the proceedings and all depositions connected therewith shall be returned to the prothonotary of the supreme court of the county where the fire has taken place and be filed by him in his office.

Proceedings on investigations as to the origin of fires.

30. The word "firewards" when used in this chapter shall include one or more of them, unless otherwise expressed or repugnant to the context.

Definition of terms.

CHAPTER 100.

OF THE DISCHARGE OF FIREARMS AND FIREWORKS.

1. If any person shall knowingly and unnecessarily discharge any firearms within the city of Halifax, or within any town or village, or within one hundred yards of any

Fine for unnecessary discharge of fire-arms.

CHAP. 101. person riding or driving, he shall for every offence forfeit two dollars on summary conviction before a justice of the peace, and in default of payment shall be imprisoned for twenty-four hours.

Fine for improperly throwing fireworks into certain places or improperly making bonfires.

2. If any person shall wantonly throw any fireworks, or permit the same to be thrown, into any street, thoroughfare or passage, or into any building, or shall make any bonfire within one hundred yards of any building, he shall for every offence forfeit eight dollars, and in default of payment shall be imprisoned for a period not exceeding fourteen days.

Prosecutions to be within eight days.

3. Prosecutions under this chapter must be commenced within eight days after the offence committed.

CHAPTER 101.

OF THE TRANSPORTATION OF GUNPOWDER.

Conveyance of gunpowder by land.

1. No person shall convey by land more than one ton of gunpowder at one time.

Protection where more than fifty lbs. in one cart.

2. More than fifty pounds of gunpowder shall not be placed in any one cart to be land-borne unless the same shall be completely covered with wollen or hair cloth, exclusive of the package and the covering of the carriage.

Carts not to stop within twenty rods of a dwelling house. Metallic substances not to be placed on a cart laden with powder.

3. No carriage conveying gunpowder shall be stopped less than twenty rods from any dwelling-house.

4. No iron, steel or metallic substance, other than copper hoops on the casks, shall be placed on any carriage, together with any quantity of gunpowder exceeding fifty pounds.

Quantities over fifty pounds weight, how secured for carriage.

5. No gunpowder exceeding fifty pounds shall be placed in any carriage, but in barrels, half barrels or quarter barrels, tight and well hooped with wood or copper hoops.

Quantities over twenty-five pounds, how secured for carriage.

6. No more than twenty-five pounds of gunpowder shall be carried from one place to another unless the package be well hooped and sufficiently wrapped with woolen or hair cloth.

Forfeitures for offences.

7. If any person shall offend against the preceding provisions of this chapter he shall forfeit for every offence a sum not exceeding eighty dollars.

Carriage of gunpowder for her majesty's service not to be affected.

8. Nothing in this chapter contained shall affect the carriage of gunpowder for her majesty's service.

Precautions to be used in blasting within 100 feet from any street, &c.

9. Every person who shall blast rocks with gunpowder in any place within one hundred feet from any street, highway or thoroughfare, shall use the most careful precautions in giving notice thereof by blowing horns or

otherwise, previously to each explosion, and shall limit the quantity of powder to be used, which must not in any case exceed eight ounces in any bore, nor explode more than three bores in any one blasting, and shall cover the spot about to be blasted with a sufficient quantity of bushes, timber, earth, stones or other materials, to deaden the force of the explosion. CHAP. 102.

10. Every proprietor, contractor, builder, workman or laborer concerned in any such blasting shall, in case of any neglect of the provisions in the foregoing section, be liable to a fine of not less than two dollars and not more than twenty dollars, to be recovered on the prosecution of any person suing for the same, if in the city of Halifax in the police court, if elsewhere before any one justice of the peace, with costs, and in case of non-payment shall be liable to imprisonment for a term not exceeding one day for every dollar of such fine; and every person concerned in so blasting rocks without proper precaution shall be responsible in damages to any person who may be injured thereby. Fine, how recovered.

Person blasting to be responsible for damages

CHAPTER 102.

OF BURNING WOODS AND MARSHES.

1. The sessions shall make regulations for preventing damage by setting fire to and burning woods, underbrush and marsh lands, at unseasonable times, and shall affix penalties for breach thereof not exceeding twenty dollars. Sessions to make regulations for burning woods, marshes, &c.

2. Prosecutions under this chapter must be commenced within three months after the offence committed. Limitation of prosecutions.

3. If any person convicted under this chapter shall not pay the penalty and costs, and shall have no goods whereon a levy can be made, he may be imprisoned for a term not exceeding one day for every one dollar of the amount of the judgment unless the same shall be sooner paid. Imprisonment on conviction for want of goods.

CHAPTER 103.

OF THE CONVEYING OF TIMBER AND LUMBER ON RIVERS AND THE REMOVAL OF OBSTRUCTIONS THEREFROM.

1. Upon the written application of twenty freeholders resident in the locality of any river or owning lands thereon, or interested in rafting and driving logs, timber and lumber, Commissioners how appointed; their jurisdiction, how defined.

CHAP. 103. or conveying wood or other articles down such river, setting forth their desire that commissioners should be appointed for clearing and removing obstructions from such river, which application shall be first read at the sessions and approved of by the grand jury and sessions who shall in such cases establish the points in the river between which the powers of the commissioners shall be limited, the clerk of the peace shall return such application into the provincial secretary's office with a certificate of such approval and the limits so established, and thereupon the governor in council may appoint three or four commissioners for the purposes of the five succeeding sections of this chapter.

Powers of commissioners of river fisheries.

2. The commissioners or overseers of the river fisheries or commissioners appointed by the sessions may remove from the river all obstructions within the limits of their authority, and may erect wing-dams at such places and in such manner as they shall see fit, and do all other acts necessary to facilitate the passage of logs, timber, lumber, wood and other articles down the river, and for that purpose may enter upon public or private lands, doing no unnecessary damage; and the commissioners or such overseers may make regulations to prevent obstruction to rivers by the throwing or falling into them of slabs and other refuse wood and sawdust from saw mills; and the sessions may impose penalties for the violation of such regulations and may direct the method of recovering the same.

Sessions may make regulations regarding refuse from saw mills being thrown into rivers, &c.

Commissioners may borrow money.

3. The commissioners may borrow upon their own credit or upon the credit of the tolls arising as hereinafter mentioned, such sums of money not exceeding four thousand dollars in the whole, as may be necessary for the purposes of their appointment.

Tolls to be established; their application.

4. When the undertaking is completed the commissioners may collect a toll of such amount, and in such manner and under such regulations for enforcing payment thereof as the sessions may from time to time direct, upon logs, timber, lumber, wood and other articles brought down the river within their jurisdiction, and shall apply the tolls to the payment of the amount borrowed with interest, but no toll shall be levied after the amount is liquidated.

Accounts to be submitted annually and audited by the sessions.

5. The commissioners shall annually submit an account of their expenditure and proceedings, and of the tolls collected, to the sessions for audit, and when approved it shall be filed by the clerk of the peace.

Operation of chapter restricted.

6. Nothing herein contained shall be construed to sanction any claim on the provincial revenue in respect of the monies so borrowed, or to authorize any interference with the navigation or fisheries of the river further than may be absolutely necessary for the purposes contemplated,

or to injure or affect private rights further than as expressly provided. CHAP. 104.

7. The sessions shall when found necessary make regulations respecting the bringing down of logs, timber and lumber on rivers, and the seasons of the year at which the same shall be brought down and the removal of obstructions thereto; and also as to the placing and upholding of booms with the consent of the owners of the soil on either side of the river, and the times of continuing such booms, and for preventing the booms from obstructing the navigation of the river, and may fix the rates of boomage that shall be paid to the owners of the booms on articles secured thereby, and the manner in which such boomage shall be collected and applied, whether for the repair of the booms or the use of the owners thereof; and also as to the taking of articles from one boom to another; and may appoint persons to take charge of the booms and collect such monies as may be due under such regulations, and may impose penalties for breach of such regulations of not less than one dollar nor more than eight dollars; but nothing herein contained shall authorize the removal of any mill-dam.

Sessions empowered to make regulations.

8. Persons may bring logs, timber and lumber down rivers, in reference to which such regulations have been made; provided they shall in all respects conform to the regulations and do as little damage as possible to the owners of the soil adjoining.

Logs, timber and lumber may be brought down rivers under regulations.

9. The word "river" when used in this chapter shall include streams running into any river.

Definition of the word river.

CHAPTER 104.

OF PUBLIC EXHIBITIONS.

1. The clerk of the licenses with the consent of two justices of the peace shall grant a license to any person applying, for holding any show, play or public exhibition, upon such person paying a sum not exceeding five dollars nor less than one dollar per day, at the discretion of the officer granting the license; the money to be paid for such license before the granting thereof, and to be paid for every day for which the license is granted, to be therein expressed, which license shall not be operative out of the county where granted.

License for public exhibitions, how obtained.

2. If the clerk of the licenses shall be absent or shall reside more than five miles from the place where it shall be intended to hold the exhibition, two justices may grant

Mode of proceeding where clerk of license absent or living beyond a certain distance.

CHAP. 105. such license under and subject to the payments, restrictions and regulations in the first section mentioned; and they shall within thirty days after granting the license make return thereof to the clerk of the licenses, and at the same time pay over the amount of duties received therefor.

Fees on granting license.

3. The clerk of the licenses or justices granting any such license shall be entitled to receive therefor a fee of fifty cents.

Fine for exhibition without license, and how recovered.

4. If any person shall hold any show, play, or public exhibition without previously obtaining a license he shall forfeit twenty dollars for every day the same shall be held, to be recovered in a summary manner before two justices of the peace, and to be by them within thirty days after receipt paid over to the clerk of the licenses.

Clerk of licenses, duty of in relation to fines collected.

5. The clerk of the licenses shall within ten days before every sittings of the sessions pay over to the county treasurer for county purposes all duties and penalties by him received under this chapter.

City of Halifax exempted from this chapter.

6. The provisions of this chapter shall not extend to the city of Halifax.

Amended 1865. Cap. 18.
CHAPTER 105.

OF STRAY HORSES AND CATTLE.

Stray horses, cattle, &c., how to be dealt with.

1. Whenever between the first day of November and the first day of May any horses or cattle or any swine or sheep shall stray into the yard, barn or enclosure of any person, or be astray and on the premises of any person to whom the owner thereof is unknown, such person may detain the same; and if not claimed within twenty-four hours he shall forthwith thereafter transmit to the town clerk of the township, or if the place be not within any township, then to the town clerk of the adjoining township, a description of every such animal, with the color, size, ear-mark if any, age, and particular marks thereof, so as the owner may be enabled to recognize it by the description; and shall at the foot thereof write a notice of the time and place of finding such animal, and also the place where the same is detained.

Town clerk's duty and fees.

2. The town clerk shall file the description and notice, and post up a copy thereof in his office and in three or more public places in the township for at least ten days after he has received the same, for which services he shall be entitled to a fee of twenty cents for every animal.

Proceedings where no claimant appears

3. If no person shall claim the animals within ten days after such notice posted up, the finder may apply to a

justice of the peace, who upon proof of the notice having been duly posted shall by order under his hand direct any constable to sell the animals; and the constables shall forthwith sell the same, having first given notice by advertisements posted in three of the most public places within the township or settlement for at least six days. No sale shall however take place between the thirtieth of April and the first of December; but in case there shall not be sufficient time after the receipt of the order to advertise the sale for some day before the first day of May, the constable shall not proceed to sell until after the thirty-first of October. CHAP. 106.

4. After deducting from the proceeds of sale five per cent for the constable for his services in advertising and selling, and the reasonable expenses of keeping the animals, together with the town clerk's fee, the balance shall be paid to the overseers of the poor for the place where the animals were found, to be applied to the use of the poor thereof unless claimed by the owner of the animals within twelve months after sale, in which case it shall be paid to the owner. Application of proceeds of sale.

5. If the owner shall claim his property before sale he shall be bound to pay the finder his reasonable expenses of keeping, and also the town clerk's fee, and if advertised the reasonable expense thereof. Fees payable where property claimed before sale.

6. If any question shall arise between the owner or overseers of the poor and the finder either respecting ownership or expenses of keeping, either of the parties may apply to two justices of the peace, who shall determine the matter and make such order therein as may appear just. Dispute as to ownership or expenses, how settled.

7. If any person who may have detained any such stray animal shall not within a reasonable time transmit the description and notice to the town clerk as hereinbefore directed, he shall forfeit for every horse or head of cattle not more than eight dollars, and for every hog or sheep not more than four dollars. Fines for detaining cattle and not proceeding as in this chapter directed.

CHAPTER 106.

OF THE GOING AT LARGE OF INFECTED CATTLE, DOGS, SWINE, VICIOUS ANIMALS AND GEESE.

1. The sessions shall make regulations for preventing the going at large of infected horses and cattle and the spreading of distempers among them, and also as to the going at large of dogs, swine and of vicious animals and of geese, and shall affix penalties for breach of any such Sessions shall make regulations respecting infected cattle, geese, dogs, &c.

CHAP. 108. regulations, which penalties shall not exceed as respects horses and cattle twenty dollars, and as respects dogs, swine and geese four dollars.

Imprisonment
for want of
goods to pay
fine.

2. If judgment be given for any such penalty and the defendant shall not pay the same, and shall not have goods whereon the same may be levied, he may be imprisoned for a period not exceeding one day for every one dollar of the penalty.

CHAPTER 107.

OF THE GATHERING OF SEA MANURE.

Sessions may
make regula-
tions respect-
ing sea manure.

1. The sessions may make regulations with regard to the collecting and taking away of sea manure which may be driven by the sea and lodged upon the shores and beaches; and if any person shall transgress such regulations he shall for every offence forfeit a sum not exceeding eight dollars.

Private rights
not affected.

2. Nothing in this chapter contained shall extend to take away or abridge any private rights or interests on any of such shores or beaches.

CHAPTER 108.

OF COASTING ON HIGHWAYS, ROADS OVER THE ICE AND GUIDE BOARDS.

Sessions may
make regula-
tions respect-
ing coasting.

1. The sessions may make regulations for preventing persons from coasting, skating or sliding on the snow or ice down the hills on highways or streets; and impose a penalty not exceeding one dollar for breach of such regulations.

Parents and
masters re-
sponsible for
penalties.

2. The parents of minors and the masters of apprentices who shall transgress any such regulation shall be liable to the penalty therefor.

Sessions may
make regula-
tions respect-
ing tracks and
roads over the
ice.

3. The sessions may make regulations for ascertaining the safest track for roads over the ice on harbors, rivers, creeks, lakes or bogs, and for putting down or continuing bushes or other marks for defining the course of such roads, and to prevent the removal or destruction of such bushes or other marks; and may affix a penalty for breach of any such regulations not exceeding four dollars for each offence, which shall be applied one half to the person suing, and the other half for county purposes.

4. The expenses incurred in putting down, continuing, repairing and protecting such marks, shall form a county charge. CHAP. 109.
Expenses, how paid.

5. Whenever the general sessions or a special sessions called for the purpose, shall by order direct that guide boards shall be erected on any public roads within their respective counties, and shall specify on what roads and branching and crossing thereof such guide boards shall be erected, the surveyors of highways and road commissioners shall thereupon erect or set up, and afterwards keep and maintain all such guide boards within their respective districts. Guide boards, how erected.

6. Every such guide board shall have an arm corresponding to each road at the branching or crossing whereof it is erected, on which arm the name and distance of the place to which such road leads shall be painted on a white ground in black letters and figures at least two inches in size. Guide board to have an arm for each road, with names, &c.

7. Surveyors of highways and road commissioners may appropriate so much of the statute labor or of the statute labor fund of their district as shall be sufficient to erect and maintain thereon the guide boards required by this chapter. Maintenance, how provided.

8. Surveyors of highways or road commissioners neglecting to erect and maintain within their district the guide boards required by this chapter shall pay a fine not exceeding ten dollars, to be appropriated one half to the road fund and one half to the prosecutor. Penalty for neglect by surveyors of highways

CHAPTER 109.

OF THE TAXATION OF DOGS.

1. The sessions upon the recommendation of the grand jury may make regulations relative to the taxation of dogs, and may fix the amount to be paid annually by owners of dogs; and such regulations shall be published throughout the county for thirty days before they shall come into operation. Sessions may make regulations relative to taxation of dogs.

2. Dogs found chasing or worrying sheep may be killed, and the owners of such dogs shall have no right of action against the persons killing the same. Dogs chasing sheep may be killed.

3. The owners of dogs that have been found chasing or worrying sheep shall be liable to a penalty not exceeding twelve dollars, if on being notified of the fact they continue to allow such dogs to go at large, Penalty upon owners.

CHAP. 110.

PART II.

OF THE ACQUISITION, TRANSMISSION, AND ENJOYMENT OF PROPERTY, REAL AND PERSONAL, THE DOMESTIC RELATIONS, AND OTHER MATTERS CONNECTED WITH PRIVATE RIGHTS.

TITLE XXVIII.

OF REAL PROPERTY AND THE ALIENATION THEREOF.

CHAPTER 110.

OF DEEDS BY MARRIED WOMEN.

Deeds by married women,
how executed.

1. All deeds executed under power of attorney or otherwise, made by a married woman jointly with her husband, or concurred in by a separate conveyance executed by him, of estates to which she is entitled or may have any present or future interest, whether in her own right or by way of dower or otherwise, shall have the same effect as if made by an unmarried woman, if such power of attorney or deed be acknowledged by such married woman before a judge of the supreme court, or a justice of the peace, or a notary public being a barrister of the supreme court, as her free act and deed, and to have been executed without compulsion by her husband or to that effect, which acknowledgment shall thereupon be certified by such judge or justice, or notary public in writing upon such power of attorney or deed.

Deeds, how executed abroad.

2. If such married woman reside without the province or be absent therefrom, such acknowledgment may be taken before the mayor of any city, the judge of any court of record, a justice of the peace, or before any public minister, ambassador, consul or vice-consul of the court of Great Britain, and shall be certified in writing on the power of attorney or deed by such public functionary; and in the case of the acknowledgment being taken before the mayor of a city, judge of a court of record or justice of the peace, his certificate shall be authenticated under the hand and seal of a notary public.

Acknowledgments, &c., to be registered.

3. Every such acknowledgment and certificate shall be registered with the power of attorney or deed, and shall

be valid and effectual to bar the right, or right of dower CHAP. 111.
of any married woman in the lands and premises therein
mentioned.

4. Where a married woman shall not have executed a deed of lands simultaneously with her husband assigning her interest therein, she may at any future time execute a deed of release of her interest therein to any person in whom the fee-simple may be, providing that the execution of such release be acknowledged in the manner above prescribed.

Married woman may execute release after her husband.

CHAPTER 111. *Annotated 1865.*
OF ESTATES TAIL. *Cap 2. Sect.*

1. All estates tail on which no valid remainder is limited are abolished, and every such estate shall hereafter be adjudged a fee simple absolute, and may be conveyed or devised by the tenant in tail, or otherwise shall descend to his heirs as a fee simple.

Estates tail abolished.

TITLE XXIX.

OF TITLE TO REAL AND PERSONAL PROPERTY BY WILL.

CHAPTER 112.

OF WILLS OF REAL AND PERSONAL ESTATE.

1. Any person may devise and bequeath by his will, executed as hereinafter mentioned, all real estate and all personal estate, and all rights and interests in real or personal estate to which he shall be entitled, either at law or in equity at the time of his death, and which if not so devised or bequeathed would devolve upon his heirs at law or representatives.

What property may be devised

2. No will by any person under the age of twenty-one years shall be valid.

Persons under 21 years incompetent to make a will.

3. A married woman may make a will in the following instances; that is to say, a will of her personal estate with her husband's consent expressed in writing; a will appointing one executor or more to a will whereof she is executrix,

Wills which may be made by married women.

CHAP. 112. or a will of real and personal estate to which she may be entitled in her own right or for her separate use; an appointment by will made in pursuance of a power to be executed notwithstanding coverture.

Will by a married woman not void for a gift to her husband.

4. No will nor any devise or bequest in any will made by a married woman shall be void by reason of any devise or bequest, or of any gift or disposition to or for the use or benefit of her husband.

Wills, how to be executed; formalities required.

5. No will shall be valid unless it shall be in writing signed at the end or foot thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Soldiers and sailors wills of personal estate may be as heretofore.

6. Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as heretofore.

Power of appointment by will to be executed as a will.

7. No appointment made by will in exercise of any power shall be valid unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall so far as respects the execution and attestation thereof be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity.

Wills executed as above required valid without further publication.

8. Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

No will to be invalid for the incompetency of witnesses.

9. No will shall be invalid on account of the incompetency of the witnesses to prove its execution.

A devise to an attesting witness, the husband or wife of such person, where there are but two witnesses, shall be void.

10. All devises, bequests or appointments, except charges and directions for the payment of debts, to an attesting witness of the will, or to the wife or husband of such person, shall be void, and he shall be admitted to prove the execution of the will or the validity or invalidity thereof; provided that where there shall happen to be two competent witnesses to the will beside such person, such devise, bequest or appointment shall not be void.

Debts charged upon real or personal estate shall not disqualify the creditor as a witness.

11. In case by any will any real or personal estate shall be charged with any debt, and any creditor or the wife or husband of any creditor whose debt is so charged shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

Executors may be witnesses.

12. No person shall on account of his being an executor of a will be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

13. All wills shall be revoked by marriage, except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to the heir, executor or administrator, or the person entitled as next of kin.

CHAP. 112.

Marriage shall revoke a will except in certain cases.

14. No will shall be revoked by any presumption of an intention to revoke on the ground of an alteration in circumstances.

Wills not revoked by presumptions.

15. No will or codicil or any part thereof shall be revoked otherwise than as above mentioned, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction, with the intention of revoking the same.

Wills, how revoked.

16. No cancelling by drawing lines across a will or any part thereof, and no obliteration, interlineation or other alteration made in any will after the execution thereof, shall be valid or have any effect except so far as the words or the effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will with such alteration as part thereof shall be deemed to be duly executed if the signature of the testator, made by himself or some other person in his presence and by his direction, and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Obliterations, interlineations, alterations, &c. in what case and how far they shall affect a will.

17. No will or codicil or any part thereof which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

Will revoked, how revived.

18. No conveyance or other act made or done subsequently to the execution of a will of any real or personal estate therein comprised, except an act by which such will shall be revoked as before mentioned, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

Conveyances and other acts, how far they shall affect wills previously made.

CHAP. 112.

Wills, when to take effect; executors to be trustees to fulfil testator's contracts in certain cases.

19. Every will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. If the testator at the time of his death were liable to perform any contract for the sale and conveyance of any real or personal estate, the executors of his will shall, notwithstanding any devise or bequest of the real or personal estate to which such contract refers, be deemed trustees thereof so far as may be necessary for performing such contract, and shall have power to execute the necessary conveyances for the performance thereof; and the executors shall hold the purchase money subject to such uses and purposes as may in such will be expressed respecting such real or personal estate or such purchase money or otherwise for the use and benefit of the estate.

Lapsed legacies to be included in any residuary devise.

20. Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained which shall fail or be void by reason of the death of the devisee in the life time of the testator or by reason of the devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise, if any, contained in such will.

Rules for construing wills of real estate in certain cases.

21. A devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any person mentioned in his will or otherwise described in a general manner, and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the leasehold estate of the testator, or his leasehold estates or any of them to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

General devises, how construed.

22. A general devise or bequest of the real or personal estate of the testator, or of the real or personal estate of the testator in any place, or in the possession of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real or personal estate, or any real or personal estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

Devises of real estate without words of limitation to be construed as a devise of a fee simple.

23. Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

24. In any devise or bequest of real or personal estate, **CHAP. 112.** the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime, or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will by reason of such person having a prior estate, or of a preceding gift being, without any implication arising from such words, a limitation of an estate-tail to such person or issue, or otherwise. But this chapter shall not extend to cases where such words import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age, or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

The words "die without leaving issue," &c., how construed.

25. Where any real estate shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

Devise of real estate to trustees or executors, how construed.

26. Where any person to whom any real estate shall be devised for an estate-tail, or for an estate in quasi entail shall die in the lifetime of the testator leaving issue, who would be inheritable under such entail if such estate existed and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Devises of estates tail shall not lapse in consequence of the devisee dying before the testator if the devisee have issue.

27. Where any person being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Devises to testator's children, &c., who die before him shall not lapse if they have left issue living.

28. Any person suppressing a will shall forfeit after the lapse of the first thirty days, twenty dollars for every month he shall so suppress such will.

Penalty for suppressing a will.

29. The words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this chapter, except when the nature of the provision or the context shall exclude

Definition of terms.

CHAP. 113. such construction, be interpreted as follows, viz: the word "will" shall extend to a codicil and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, and to any other testamentary disposition; and the words "real estate" shall extend to manors, messuages, lands, rents and hereditaments, whether freehold or any other tenure whatsoever and wheresoever, and whether corporeal, incorporeal or personal, and to any undivided share thereof, and to any estate, right or interest, other than a chattel interest therein; and the words "personal estate" shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other stocks or funds, whether in this province or the United Kingdom or elsewhere, to securities for money not being real estates, to debts, rights of action, rights, credits, goods, and all other property whatsoever, which by law devolves upon the executor or administrator, and to any share or interest therein.

TITLE XXX.

OF TITLES TO REAL PROPERTY BY SPECIAL PROVISIONS OF LAW.

CHAPTER 113.

OF JOINT TENANCY AND TENANCY IN COMMON.

An estate to two or more persons unless declared to be in joint tenancy, shall be a tenancy in common except when vested in them as trustees or executors.

1. Every estate granted or devised to two or more persons in their own right shall be a tenancy in common, unless expressly declared to be in joint tenancy; but every estate vested in trustees or executors as such shall be held by them in joint tenancy. This section shall apply as well to estates already created or vested as estates hereafter to be granted or devised.

CHAPTER 114.

OF THE SALE OF LANDS UNDER FORECLOSURE OF MORTGAGES.

1. When actions of ejectment by a mortgagee or actions on bonds or notes secured by mortgage, or on any covenant in the mortgage, are brought in the supreme court, and no suit touching the same matter is pending in the court, the person having the right of redemption on appearing as defendant may pay to the plaintiff or bring into court the amount due with costs, and thereupon the court by a rule may compel the plaintiff to re-convey to such defendant the land mortgaged, and deliver up all writings in his custody relating thereto.

In actions for money secured by mortgage defendant may pay into court and have a reconveyance.

2. In case such mortgagor or any one of several of such mortgagors be an absent or absconding debtor, a declaration in ejectment or other process may be served upon the tenant, if any, in possession of the lands, and upon any of such defendants who shall not be absent or absconding, and a copy thereof shall also be left at the last place of abode of any of the defendants who may be absent or absconding; and such service if made the usual time limited by law for service of process shall be sufficient to give jurisdiction to the court, and the plaintiff may proceed to final judgment and sale of the lands as hereinafter mentioned; but before such declaration shall be served the same affidavit shall be made and filed in the office of the prothonotary of the county where the declaration is returnable, as is necessary in ordinary cases of proceeding against absent or absconding debtors. In cases under this section it shall not be necessary to wait two terms before going to trial as in other cases against absent or absconding debtors.

Proceedings where one or more of the mortgagors absent may be as in cases of absent debtors.

3. In case any persons beside the mortgagor are interested in the lands who would require to be made defendants, if proceedings were had in chancery, then, in addition to the service of process upon the defendant, or proceedings in the second section mentioned where he is an absent or absconding debtor, a notice in writing shall be served on all such persons, their attornies or agents, specifying the proceedings that have been or are about to be taken, and requiring them to appear at the supreme court to protect their interests; which notice shall be served the same length of time as is required in notices of trial.

Notice to be given to such parties as in chancery would be defendants.

4. In case the defendant shall neglect to pay the amount found due to the plaintiff by the court, with costs, the court may order the lands mortgaged to be advertised by handbills in the county for at least thirty days, and thereafter to be sold at public auction by the sheriff of the county wherein the lands lie.

Sale of mortgaged premises

CHAP. 115.

Re-hearing provided where defendant is an absent debtor.

Sheriff's deed, its effect; when recorded shall convey mortgagor's right; writ of possession may issue.

Proceeds of sale how applied.

Powers of supreme court to adjust equities.

One judge to have power of court.
Exception.

5. In case the defendant shall be an absent or absconding debtor he shall be entitled to a re-hearing at any time within three years after judgment; and the plaintiff, upon obtaining a rule for the sale of the mortgaged lands, shall give security for the re-payment of the sums levied, if judgment should be reversed on such re-hearing.

6. The deed shall be executed and delivered by the sheriff to the purchaser, and shall be taken as presumptive evidence of the requisitions of this chapter having been complied with, and on being recorded in the books of registry for the county in which the lands lie, shall be sufficient to convey all the estate and interest of the mortgagor in the lands therein described, and the court may award a writ of possession upon judgment being had.

7. The sheriff shall out of the proceeds of the sale pay to the plaintiff the sum due to him, and shall pay over the residue if any to such person as the court shall direct.

8. The supreme court shall have the same powers as are possessed by the court of chancery in reference to the proceedings in such suits, and for the equitable adjustment of the rights of the different parties interested.

9. The powers hereby conferred upon the court may be exercised by a single judge thereof, except where the trial of an issue before a jury may become necessary, subject to an appeal from any order of the judge to the court at its next term in the county.

CHAPTER 115.

OF THE SALE OF LANDS TO SATISFY EXECUTION DEBTS.

Judgments to bind lands so soon as recorded, but shall not be levied till after one year.

A beneficial interest in lands held in trust may be taken in execution.

Execution as against lands may issue within five years.

Execution may be levied upon a part or the whole of any lands, as plaintiff shall direct.
Subsequent judgment cre-

1. Judgments recovered in the supreme court shall bind the real estate of the debtor from the time such judgment shall be recorded in the books of registry for the county or district wherein such real estate is situate; but no lands shall be levied upon until one year after such registry.

2. The interest of the party beneficially interested in lands held in trust for him, may be taken in execution for the payment of his debts in the same manner as if he were seized or possessed of such lands.

3. Execution as against lands may issue at any time within five years from the signing of the judgment, without a *scire facias* or leave of the court.

4. The plaintiff may order execution to be levied on the whole or any portion of the real estate lying within such county or district.

5. Where a judgment has been so registered for the period of one year, and no levy has been made on the real

estate bound thereby, any judgment creditor whose judgment has been subsequently registered, may, by a written notice, require the prior judgment creditor to levy on the real estate within three months.

6. If the prior judgment creditor shall not levy, the party giving the notice shall acquire a preference over the judgment creditor to whom such notice had been given.

7. The sheriff upon receiving such execution, shall, at the expiration of the one year, levy on such lands without appraisement, and shall cause to be inserted for thirty days next preceding the day of sale in the royal gazette newspaper, and also, except in the county of Halifax, in any newspaper which may be published in the county or district wherein the lands are situate, an advertisement containing a description of the lands directed to be levied on, stating that such lands have been taken in execution at the suit of the plaintiff against the defendant, the time and place fixed for such sale, and having appended thereto the name of the sheriff and the attorney of the plaintiff.

8. The sheriff after causing copies of such advertisement to be posted up in the most public places of the township or settlement wherein the lands lie, for at least twenty days previous to the time appointed for the sale, shall proceed to sell the same by public auction to the highest bidder.

9. If the defendant by notice in writing delivered to the sheriff at least ten days previously to the sale, require that certain portions of the land so advertised be first sold, the sheriff shall cause the same to be first put up for sale, and if a sufficient sum should be realized therefrom to satisfy the execution, interest and expenses, no other part of such lands shall be sold; otherwise he shall proceed with the sale of the remainder.

10. The sheriff shall deliver to the purchaser a deed of such lands, which shall be sufficient to convey to the purchaser all the interest of the defendant in the lands therein described, subject to prior incumbrances.

11. The sheriff's deed shall be presumptive evidence of the defendant's title having been thereby conveyed to the purchaser.

12. Where the lands so conveyed shall be in the possession of the tenants of the defendant, the purchaser shall become the landlord, and shall have the like rights and remedies against the tenant as the defendant would have had, and shall be entitled to all rents accruing after such purchase.

13. Where the sum realized by such sale shall be more than sufficient to satisfy the execution and necessary expenses attendant on such levy and sale and interest on the amount of the judgment from the date thereof, the surplus shall be retained by the sheriff, to be paid to such person

CHAP. 115.

ditors may require prior judgment creditor to levy.

In case of neglect the subsequent creditor shall acquire a preference.

Lands to be levied upon without appraisement and advertised 30 days; contents of advertisements.

Copies of advertisement to be posted twenty days; sale to the highest bidder.

Defendant may by timely notice select any particular portion to be first sold.

Sheriff's deed, its operation and effect.

To be presumptive evidence of conveyance of defendant's title.

Where lands are in possession of a tenant the purchaser shall become the landlord.

Any surplus money after satisfaction of the execution and expenses to be paid as the court shall direct.

CHAP. 116. as may be directed by an order of the supreme court or any judge thereof.

Special provisions applicable to titles made previously to 1841.

14. Titles to land made by any sheriff previous to the tenth day of April, one thousand eight hundred and forty-one, shall not be invalidated by any irregularity or defect in the proceedings prescribed by statute for the sale of real estate, provided the party shall have been in possession of the land one year at least before such date, and shall have paid the purchase money to the sheriff.

TITLE XXXI. OF COPYRIGHTS AND PATENTS.

CHAPTER 116.

OF THE LAW OF COPYRIGHT.

Copyrights,
how secured.

1. The author of any map, chart or book printed, or of any print engraved within this province, who has not transferred the copyright thereof, and any other person who has legally acquired the copyright of any such map, chart, book or print, in order to publish the same, shall have the sole right of publishing such map, chart, book or print for the term of twenty-one years from the recording the title or the entry thereof in the office of the secretary of the province; and the author of any map, chart, book or print not published within the province, his executors, administrators or assigns shall have the sole right of publishing such map, chart, book or print for the like term; and if at the expiration of such term, the author of any such map, chart, book or print shall be living, the same right shall be continued to him for the further period of fourteen years; but he shall cause the title thereof to be a second time recorded and published, within six months before the expiration of the first term of twenty-one years; and no person shall be entitled to any right hereunder unless he shall be resident within the province at the time of his application therefor.

Penalties for
infringing
copyrights by
importation.

2. If any other person after the recording of the title of any map, chart or book, and publishing the same within the times limited, shall print or import from any other country copies of such map, chart or book without the consent of the author and proprietor thereof first had in writing signed in the presence of two witnesses, or expose to sale any such copy of such map, chart or book, such

offender shall forfeit all copies of such map, chart or book, and all sheets, being part of the same, to the author and proprietor thereof, who shall forthwith destroy the same; and every such offender shall forfeit not less than twenty cents nor more than one dollar for every sheet found in his possession, to whosoever will sue for the same. CHAP. 116.

3. If after the recording the title and entering of any print, any person whosoever shall engrave, etch or work, or in any manner copy or sell in the whole or in part, by copying, varying, adding to or diminishing from the main design, or shall print, reprint, or import for sale any such print, or any part thereof, without the consent in writing of the proprietor thereof, signed in the presence of two witnesses, or knowing the same to be so printed, reprinted or imported without the consent of the proprietor, shall publish, sell, or expose the same to sale, such offender shall forfeit the plates on which such print shall be copied, and all sheets of such print, and all parts thereof to the proprietor of the original print, who shall forthwith destroy the same; and such offender shall forfeit the sum of four dollars for every print found in his custody, either printed, published, or exposed to sale, or otherwise disposed of to whosoever will sue for the same.

Penalties for infringing copy rights by imitation or otherwise.

4. No person shall be entitled to benefit under these provisions in cases where any map, chart, book or print has been already published, unless a printed copy of the title of the same shall before publication be deposited in the secretary's office, who shall record the same in a book kept by him for that purpose, in the words following, and give a copy thereof under his hand to the author or proprietor if required:

A printed copy of the title to be registered in the provincial secretary's office before publication.

“Province of Nova Scotia.

Be it remembered that on this — day of —, A. D. 18—, A. B. of —, in the said province, has deposited in this office the title of a map, [*chart, book or print, as the case may be,*] the copyright whereof he claims in the words following: [*here insert the title,*] in conformity with chapter one hundred and sixteen of the revised statutes.

C. D., provincial secretary.”

For which certificate the secretary shall receive one dollar, and one dollar for every copy, and the author or proprietor shall cause a copy of such record to be inserted at full length in the title page, or in the page following the title page of such book; and if a map, chart or print, the following words shall be impressed on the face thereof: “entered according to law on the — day of —, 18—, by A. B., of —.”

5. If any person not having legally acquired the copyright shall print or publish any map, chart, book or print, and shall insert therein or impress thereon that the same has been entered according to law, or words purporting

Penalty for illegally inserting an entry as registered.

CHAP. 116. the same, he shall forfeit four hundred dollars, to be applied as hereinafter directed.

Limitation of actions.

6. Actions under this chapter shall be commenced within three years from the time when the cause of action accrued.

Printing or publishing a manuscript without the author's consent, actionable.

7. Any person printing or publishing any manuscript without the consent of the author or proprietor thereof if resident in this province, shall be liable to such author or proprietor for all damage occasioned thereby, to be recovered by a special action on the case.

Proprietors of protected works required to furnish copies to the legislative libraries.

8. The proprietor of any map, chart, book or print, entitled to the rights and privileges hereby conferred, shall within six months from the publication thereof deposit one copy thereof in the library of the legislative council, and one copy in that of the house of assembly.

All books may be imported duty free except reprints of books protected by imperial act.

9. All books shall be admitted into this province duty free, except re-prints of books, the copyright whereof is protected by the acts of the imperial parliament.

Duties collected on books protected by imperial acts, how remitted to the proprietor.

10. On the importation of any reprint of books, bound or in covers, the copyright of which is protected by the acts of the imperial parliament, there shall be paid an *advalorem* duty of twenty per cent, but this duty shall not extend to newspapers or other regular periodicals containing extracts only from such books. The duty when collected shall be paid into the treasury and remitted by the governor to the commissioners of customs at London, with a detailed account thereof, once a year, that the same may be paid to the registered proprietor of the copyright of the books respectively; such reprints, however, shall not be liable to duty unless the originals shall have been registered according to the provisions of the imperial act passed in the fifth and sixth years of her majesty's reign, intituled "an act to amend the law of copyright."

Fine for improperly importing, selling or having dutiable re-prints, how recovered, how applied; re-prints forfeited, &c.

11. Any person who shall import or bring into the province for sale, use or hire, any reprints hereby made liable to duty without paying the same, or shall knowingly sell, publish or expose to sale, or let to hire, or have in his possession any such reprint, shall be liable to a penalty of twenty dollars and double the value of every copy of such reprint, which may be sued for before two justices of the peace as an ordinary debt, eight dollars thereof to go to the officer who shall sue for the same, and the remainder to be paid into the treasury and remitted for the registered proprietor of the copyright; and every reprint imported contrary to these provisions shall be forfeited and sold, and one half of the proceeds thereof shall be paid into the treasury to the use of the registered proprietor, and the other to the seizing officer.

Reprints imported to be stamped.

12. Each reprint on its importation shall be stamped by the officer before whom the entry is made, and the form of the stamp shall be furnished by the receiver general to the several outports if required.

CHAP. 117.

CHAPTER 117. *Amended in 1865.*OF PATENTS FOR USEFUL INVENTIONS. *Cap 4.*

1. Whenever any person resident in the province, and who shall have resided therein for the space of one year previous to his application, shall apply to the governor, alleging that he has discovered any new and useful art, machine, manufacture or composition of matter or any new or useful improvement thereon not heretofore used or known, and pray that a patent may be granted him for the same, the governor may direct letters patent to be issued, reciting therein the allegations of such petition, and giving a short description of such invention, and shall thereupon grant to the person so applying for the same and his representatives for a term not exceeding fourteen years the exclusive right of making, using and vending the same to others, which letters patent shall be good and available to the grantee, and shall be recorded in the secretary's office in a book for that purpose, and shall then be delivered to the patentee.

Letters patent,
how and by
whom to be
obtained.

2. Where any letters patent shall be obtained by any person for any such invention, and thereafter any other person shall discover any improvement in the principle or process of any such invention, and shall obtain letters patent for the exclusive right of such improvement, the person who shall obtain such new patent shall not make, use or vend the original invention, nor shall the original patentee make, use or vend any such improvement.

Patentees of
improvements
not to use any
original inven-
tion; original
patentee not to
use the im-
proved patent.

3. The simple change of the form or proportions of any machine or composition of matter shall not be deemed a discovery or improvement within the meaning of this chapter.

Changes of form
or proportions
not deemed an
improvement.

4. Persons applying for letters patent, on delivering in their petition, shall pay into the secretary's office four dollars, to be applied as other fees payable therein.

Fees on patents.

5. Any person may receive from the secretary's office any copy of such letters patent, or of the petition whereon the same were granted, or of any paper or drawing connected therewith, on paying ten cents a folio, and a reasonable fee for every copy of such drawings.

Copies of letters
patent and
drawings, how
charged for.

6. Before any person shall obtain any letters patent he shall make oath in writing that he verily believes that he is the true inventor or discoverer of the art, machine or composition of matter, or improvement, for which he solicits letters patent, and that such invention or discovery has not been known in this province or in any other country, which oath shall be delivered in with the petition for such letters patent.

Oath preparatory
to granting
letters patent.

CHAP. 117.

Affidavit may be made in county where applicant resides.

Descriptions, explanations and models to be deposited in the provincial secretary's office.

Patentee's rights may be assigned; assignments to be recorded.

Actions for illegally using or selling a patent.

Defence, how pleaded, and what may be given in evidence.

7. The affidavit may be sworn by the person making such application before any judge or commissioner for taking affidavits in the supreme court or the custos of the county in which such person shall reside.

8. Before any person shall obtain any letters patent he shall deliver into the secretary's office an intelligible and exact description of such invention, and of the manner of using, or process of compounding the same, so as to enable any person skilled in the science of which it is a branch to make and use the same; and in case of any machine, shall deliver a model, and explain the principle by which it may be distinguished from other inventions, and shall accompany the whole with drawings and written references where the case admits of drawings, or with specimens of the ingredients sufficient for the purpose of experiment where the invention is a composition of matter, which description, signed by such person and attested by two witnesses, shall be filed in the secretary's office, and copies thereof, certified by the provincial secretary, shall be competent evidence in all courts where matters concerning such letters patent may come in question; but the governor may upon special grounds being shewn dispense with the delivery of the model at the secretary's office if he shall deem it right to do so.

9. Any patentee may assign all his right in such invention and discovery to any person; and the assignee thereof, having recorded such assignment in the secretary's office, shall stand in the stead of the original patentee as well as regards all his rights as all his liabilities; and the assignee of any such assignee shall also be considered to be in the stead of the original patentee.

10. Whenever any letters patent shall be granted to any person, and any other person, without the consent of the patentee or his representatives first had in writing, shall make, use or sell the invention or discovery whereof the exclusive right is secured to such patentee, the person so offending shall be answerable to him or his representatives in damages.

11. The defendant in such action may give this chapter and every special matter in evidence to prove that the specification filed by the patentee does not contain the whole truth relative to the invention or discovery alleged to have been made by him, or contains more than is necessary to produce the described effect, which concealment or addition shall fully appear to have been fraudulently made, or that the invention or discovery so secured by letters patent was not originally discovered by the patentee, but had been in use or had been described in some public work anterior to the supposed invention or discovery of such patentee, or that such patentee had surreptitiously obtained such letters patent for the inven

tion or discovery of some other person, in either of which CHAP. 118.
cases, upon proof thereof, the verdict shall be found and
judgment entered thereon for the defendant with costs,
and such letters patent, by the court, shall thereupon be
adjudged void.

TITLE XXXII.

OF FRAUDS, PERJURIES AND SECRET BILLS OF SALE.

CHAPTER 118.

OF THE PREVENTION OF FRAUDS AND PERJURIES.

1. All leases, estates, or other interests in lands not put in writing and signed by the parties creating or making the same, or their agents thereunto authorized by writing, shall have the force of leases or estates at will only, except leases not exceeding the term of three years from the making thereof whereupon the rent reserved shall amount at least to two-thirds of the annual value of the lands demised.

Leases and estates in land not in writing to be estates at will, except as to leases under three years.

2. No interest in land shall be assigned, granted or surrendered, except by act and operation of law, unless it be by deed or note in writing, signed by the party assigning, granting or surrendering the same, or by his agent thereunto authorized by writing.

Interest in lands assignable only by deed or note in writing.

3. No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate, or whereby to charge a defendant upon any special promise to answer for the debt, default or miscarriage of another person, or whereby to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands or any interest therein, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which the action shall be brought, or some memorandum or note thereof shall be in writing, signed by the party to be charged therewith, or some other person authorized by him—provided always that it shall not be necessary that such agreement, memorandum or note shall specify the consideration upon which it was given.

Previous contracts and agreements which require to be in writing and signed by the party chargeable.

Proviso.

4. No contract for the sale of any goods for the price of forty dollars or upwards shall be good, except the buyer

Contracts for goods above forty dollars not

CHAP. 119. accept part of the goods so sold and actually receive the same, or give something in earnest to bind the bargain or in part of payment, or that some note or memorandum in writing of the bargain be made and signed by the parties to be charged by such contract, or by their agents thereunto authorized.

Declarations and creations of trust in lands to be in writing; implied and resulting trusts excepted.

5. No declaration or creation of a trust in lands shall be valid unless it shall be in writing, signed by the party entitled to declare or create the trust, or by his last will; but this provision shall not extend to any trusts in lands arising or resulting by implication or construction of law, or which may be transferred or extinguished by act or operation of law.

Assignment of trusts to be in writing.

6. No grant or assignment of any trust shall be valid unless it shall be in writing, signed by the party granting or assigning the same, or by his last will.

CHAPTER 119,

OF THE PREVENTION OF FRAUDS ON CREDITORS BY SECRET BILLS OF SALE.

Bills of sale or sworn copies to be filed with registrar of deeds where maker resides.

1. Every bill of sale of personal chattels made after the passing of this chapter, either absolutely or conditionally, or subject or not subject to any trust, and whereby the assignee shall have power either with or without notice on the execution thereof, or at any subsequent time to take possession of any property and effects comprised in or made subject to such bill of sale, and every schedule annexed thereto or therein referred to, or a true copy of such bill of sale and schedule, shall be filed with the registrar of deeds of the county or district where the maker resides, and in case a copy be filed the same shall be accompanied by an affidavit of the execution of the original bill of sale, otherwise such bill of sale as against the assignees of the grantor, under the insolvent debtors act, or for the general benefit of his creditors, or as against the execution creditors, or sheriffs and constables, and other persons levying on or seizing the property comprised therein, under process of law, shall only take effect and have priority from the time of the filing thereof.

Only to take effect from date of filing.

Defeasance to be filed.

2. In case such bill of sale is subject to any defeasance the same shall be considered as part thereof, and such defeasance, or a copy thereof shall be filed with the bill of sale or copy, otherwise such bill of sale shall be null and void as against the same persons and as regards the same property and effects, as if such bill of sale or copy thereof

had not been filed according to the provisions of this CHAP. 119.
chapter.

3. The registrar of deeds shall cause the bills of sale or copies thereof, so deposited with him, to be numbered and indexed, and an alphabetical list thereof to be made in a book to be kept by him for that purpose, containing the name and description of the grantor and grantee, the date of execution and filing, and the sum for which the same has been given, and every bill of sale and copy may be inspected by any person paying a fee of twenty cents therefor.

Bills of sale when filed to be numbered and indexed.

Fee for inspection.

4 When a bill of sale shall have been discharged an entry of such discharge may be made in the registry list upon the production of a certificate from the holder of such bill of sale duly attested to by the oath of a subscribing witness made before the registrar of deeds or any justice of the peace, or otherwise as required for the registry of deeds of real estate, and such certificate shall be indexed and entered on the list, and on the files kept by the registrar.

Discharge, how entered.

5. The registrar shall be entitled to twenty cents for his trouble in filing, indexing and entering every bill of sale and copy, and to twenty cents for administering every oath under this chapter, and to twenty cents for entering and indexing every certificate of discharge of a bill of sale.

Registrar's fees

6. In construing this chapter the following words and expressions shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such constructions, that is to say:

Meaning of terms used in chapter.

The expression "bills of sale", shall include bills of sale, assignments, transfers, declarations of trust without transfer, and other assurance of personal chattels, and also powers of attorney, authorities or licenses to take possession of personal chattels as security for any debt; but shall not include the following documents, that is to say, assignments for the general benefit of the creditors of the person making or giving the same, marriage settlements, transfers or assignments of any ship or vessel, or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, warehouse keepers certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented, assignments of personal property to creditors under proceedings for the relief of insolvent debtors.

"Bills of sale."

7. The expression "personal chattels" shall mean goods, furniture, fixtures and other articles capable of

"Personal chattels."

CHAP. 120. complete transfer by delivery, and shall not include chattel interests in real estate, nor shares or interests in the stock, funds or securities of any government, or in the capital or property of any incorporated or joint stock company, nor choses in action.

"Apparent possession."

8. Personal chattels shall be deemed to be in the "apparent possession" of the persons making or giving the bill of sale so long as they shall remain or be in or upon any building, land, or other premises occupied by him, or as they shall be used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person.

TITLE XXXIII.

OF THE DOMESTIC RELATIONS.

Amended — 1865. Cap. 31.

Cap. 32 of Act of 1865. CHAPTER 120 = *Repealed 1866*

OF THE SOLEMNIZATION OF MARRIAGE AND THE REGISTRATION OF MARRIAGES, BIRTHS AND DEATHS.

This Chapter Amended in 1868. Cap. 2.

Governor in council to prescribe forms.

1. The governor in council may from time to time prescribe and change forms to be used in the carrying into operation of and for facilitating and rendering uniform the duties to be performed under this chapter, and which forms shall be used under the provisions, penalties and obligations of this chapter, in the same manner as if set out in a schedule hereto and specially referred to, unless from the context the meaning is evidently different. The terms "deputy registrars" mean the issuers of marriage licenses and deputy registrars of marriages, births and deaths; and "occupier" shall include master, governor, keeper, steward, resident medical officer or superintendent of gaol, prison or penitentiary, poors' asylum, hospital, lunatic asylum, or other public or private charitable institutions.

Definition of terms.

Persons who may solemnize marriage.

2. Every person recognized as a duly ordained minister by any congregation or body of christians within this province, may solemnize marriage by license, or after publication of banns, in conformity with the provisions of this chapter.

Marriage by publication of banns.

3. No person shall officiate in the solemnization of any marriage unless notice of such marriage shall have previously been given publicly during the time of divine

service at three several meetings at a place of public worship on two or more Sundays—provided there shall be more than one public service in the said place of worship on each Sunday, otherwise at two several meetings on two Sundays in the place where at least one of the parties resides, or unless a license shall have been obtained as herein prescribed for the solemnization of such marriage.

4. The officiating minister of a congregation at the place where either of the parties desiring to be married resides, shall give the notices in the preceding section mentioned, after having been requested to do so, unless in cases where compliance would be illegal or inconsistent with the rules and discipline of the church or congregation to which the minister or parties respectively belong.

Officiating minister to publish banns.

OF LICENSES FOR THE SOLEMNIZATION OF MARRIAGE.

5. The governor may from time to time sign and seal marriage licenses in blank, which shall be deposited by the provincial secretary with the postmaster general for distribution, who shall place them in such number as may from time to time be required, together with an equal number of blank bonds, in the hands of persons to be appointed by the governor in council throughout the province to be issuers of marriage licenses and deputy registrars of marriages, births and deaths, and who shall be so located as that no part of any county shall be at inconvenient distance from one of them. When it can be conveniently and properly done, postmasters and way office keepers shall be selected, and due publicity under the direction of the governor in council shall be given to these appointments and the objects of this chapter.

Governor to sign licenses; how distributed

Postmasters, &c. to be issuers when convenient.

6. The deputy registrars shall deposit with the postmaster general, a receipt for all the blank marriage licenses they shall respectively receive, for which they shall be answerable to him at the rate of two dollars and fifty cents for each license.

Deputy registrars to give receipts for licenses.

7. When a marriage license is required for use, application shall be made to a deputy registrar, who on receiving for the license two dollars and twenty-five cents, and for his own use a fee of twenty-five cents, and on execution by the man contemplating marriage and sufficient sureties, of one of the bonds properly filled up, shall insert in one of the blank marriage licenses in his possession the name of the minister to whom it is to be directed, and the names, abodes and additions of the man and woman to be married, and having subscribed it with his own name and the exact date of issuing, shall deliver the license so perfected to the party applying, and a marriage license shall not be issued or delivered except thus perfect and adapted for some particular marriage clearly expressed in it; and it shall not on any pretence be used for any other marriage. The

Marriage licenses, how issued.

CHAP. 120. bond among other things may be conditioned for return of the license.

FOR OBTAINING THE MATERIALS FOR THE REGISTRATION
OF MARRIAGES, BIRTHS AND DEATHS.

1.—*For Registration of Marriages.*

Records of issue
and return of
licenses.

8. The deputy registrars shall record the issue of every license with the date, and the names of the clergyman, the parties and sureties; and shall record the return of every license, with the date when received by him, and the particulars of the marriage, and the name of the officiating clergyman as certified in the return.

Clergyman to
record particu-
lars.

9. Every clergyman authorized by law to perform the marriage ceremony shall apply for, and shall, on application, obtain from the nearest deputy registrar, forms in which he shall register with the required particulars, all the marriages celebrated by him, whether by banns, license, or otherwise. But this shall not be construed to interfere with the keeping of any other marriage register he may be otherwise required or may see proper to keep.

2.—*For Registration of Births.*

Notice of birth
to be given to
nearest deputy
registrar.

10. The father of any child born in this province, or in case of his death or absence, the mother, or in case of the death or inability of both parents, any person standing in the place of the parents, or if none such be, then the occupier of the house or tenement in which to his knowledge such child was born, or the nurse or some person present at the birth, shall, as soon after the birth as possible, give notice thereof to the nearest deputy registrar, who shall fill up the form to be provided for that purpose with the several particulars required in it, according to the knowledge of the informant, who shall thereupon sign the same. The deputy registrar shall subscribe his name as witness, and in case of his absence, some person authorized by him shall perform the duty and subscribe the record in his stead.

His duty there-
on.

Birth to be
registered with-
in six months;
exception.

11. After the expiration of six months from the day of the birth, it shall not be lawful for any deputy registrar to register the birth of any child, except children born at sea.

Illegitimate
child, birth
how registered.

12. In registering the birth of an illegitimate child, it shall not be lawful for the name of any person to be entered as the father, unless at the joint request of the mother and of the person acknowledging himself to be the father, who, in that case shall sign the register as informant, along with the mother; and in such case the deputy registrar shall write the word "illegitimate" under the child's name in the register.

13. If any child of a parent usually resident in Nova Scotia shall be born at sea, and an entry of birth made in the vessel's log book, the deputy registrar may, on sufficient proof of the correctness of such entry, cause the same to be registered in a book kept for that purpose, called "the marine register book of births."

CHAP. 120.

Birth at sea,
how registered.

3.—*For the Registration of Deaths.*

14. Some person present at the death of any person, or the occupier of the house or tenement in which a death shall take place, or if the occupier be the person who shall have died, then some one or more of the persons residing in the house in which the death took place, or if such death shall not have taken place within a house, then any person present at the death, or having knowledge of the circumstances attending the same, shall before the interment of the body, or within ten days after such interment, supply to the nearest deputy registrar, according to his or her knowledge or belief, all the particulars required to be registered touching such death by the form to be provided, and shall sign the form or certificate when filled up in presence of the deputy registrar, or of a witness in case of his absence.

Notice of death
to be given to
nearest deputy
registrar.

15. If any person shall find exposed any new born child, he shall forthwith give notice of the finding of the same to the nearest deputy registrar, who shall after the proper enquiry take from the informant a certificate signed by him of so much of the particulars required to be registered as shall have been ascertained.

New born child
found exposed;
notice, &c.

16. In every case in which an inquest shall be held on any dead body, the coroner shall communicate the finding of the jury by certificate, in writing under his hand to the nearest deputy registrar within seven days after the holding of the inquest.

Inquest, notice
of.

17. Every duly qualified medical practitioner who shall have been in attendance during the last illness, and until the death of any person, shall within seven days after the death of such person transmit to the nearest deputy registrar a certificate under his signature of the cause of death, according to a form to be provided by the deputy registrar; and it shall be the duty of every duly qualified medical practitioner to apply for blank forms for this purpose.

Medical prac-
titioners in at-
tendance to
give certificate
of causes of
death.

18. If any person usually resident in Nova Scotia, or the child of any such person which shall be born at sea, shall die at sea, and an entry of the death be made at the time in the vessel's log book, the deputy registrar may on sufficient proof of the correctness of such entry cause the death to be entered in a book kept for that purpose, called "the marine register book of deaths."

Deaths at sea,
how registered.

19. It shall be the duty of every deputy registrar to ascertain as far as may be in his power the several

Deputy regis-
trar; duties of.

CHAP. 120. marriages, births and deaths occurring in his vicinity, and to cause the same to be registered under the provisions of this chapter:

When persons whose signatures are required are unable to write, their cross or mark made in the presence of, and attested by, the deputy registrar or a witness, shall be equivalent to signature.

Governor in council to define limits of jurisdiction.

And it shall be in the power of the governor in council, should it be found expedient for carrying out this chapter, from time to time to cause the limits to be defined of all, or of some only, of the deputy registrar's jurisdiction under this chapter, and as occasion may require to alter the same, of which due publicity shall be given.

OF THE REGISTRATION OF MARRIAGES, BIRTHS AND DEATHS IN EACH COUNTY OR DISTRICT.

Errors in entries; how corrected.

20. If any error shall be discovered to have been committed in the entry of any marriage, birth or death in any register, the person discovering the same shall forthwith give information thereof to the deputy registrar, and such deputy registrar is hereby authorized and required to investigate the circumstances of the case; and if he shall be satisfied that an error has been committed in any such entry it shall be lawful for him to correct the erroneous entry, according to the truth of the case, by entry in the margin, without any alteration of the original entry.

Registration returns to be free of postage.

21. Envelopes enclosing the papers or returns required to be transmitted and made under this chapter shall be marked "registration returns," with the signature of the officer or clergyman transmitting subscribed, and no post age shall be paid or payable thereon.

RETURNS.

1.—*By Clergymen.*

Returns by clergymen; when and how made.

22. Every clergyman shall return to the deputy registrar by whom the same is subscribed, every marriage license used by him for the celebration of marriage within ten days after such celebration, with the blank certificate endorsed thereon, fully filled in and subscribed by himself, stating the fact of the celebration, the names, abodes and additions of the couple married, the time and place of such marriage, and the names of at least two persons present thereat besides himself.

Clergyman to transmit register annually.

23. Every clergyman authorized by law to perform the marriage ceremony shall annually in the first week in January transmit under his signature to the deputy registrar from whom he received the blank forms, or if he shall not continue deputy registrar then to his successors, or otherwise to the nearest deputy registrar, the register

of all marriages solemnized by him in the preceding year, and which he is required by this chapter to keep. The deputy registrar shall give to every clergyman a receipt for licenses returned and registry of marriages given in under this chapter; and in case of removal of the clergyman from the county he shall make such return before his removal or immediately thereafter, and in case of his death the same shall be immediately thereafter made by his executors or administrators.

CHAP. 120.
In cases of removal or death.

2.—By Deputy Registrar.

24. Every deputy registrar shall in the second week in January in each year return under his signature to the financial secretary as regards the year ending on the thirty-first day of December preceding as follows:

I. All the licenses issued by him and returned to him, with all certificates of marriage returned to him.

II. All bonds taken by him on the issue of marriage licenses.

III. All the registers of marriage returned to him by clergymen.

IV. His own records of marriage licenses issued by and certificates of marriage returned to him.

V. All the declarations or certificates of birth made to him.

VI. All the certificates or declarations of deaths and causes of death made to him.

VII. And generally all the entries and returns required under this chapter to be made by the deputy registrar in relation to births, marriages and deaths, together with an exact list of the documents returned, signed by him.

25. Every deputy registrar shall also within the first week of January, April, July and October in each year, return to the postmaster general an account verified under oath of all marriage licenses issued by him, and of the number of marriage licenses remaining in his hands, and shall pay and with such account transmit to the postmaster general the full amount of fees on all licenses issued by him, at two dollars and fifty cents for each license, deducting the sums paid by him to clergymen under the twenty-eighth section, and of which he shall render an account under his signature.

3.—By Postmaster General.

26. The postmaster general shall, within the first week of February in each year, return to the provincial secretary, for the information of the legislature, a separate account of monies received for marriage licenses and paid out of that fund under this chapter; also, an account of the marriage licenses issued, and to whom, and the number standing still charged against each deputy registrar.

*Accounted 1860
Cap 20.*
Deputy registrars to make annual returns to financial secretary.

*Return to
Magistrate
2nd week of
April, July
October.*

To return accounts to postmaster general annually.

Postmaster general to return accounts annually to the provincial secretary.

CHAP. 120.

OF REMUNERATION OF OFFICERS.

1.—*The Deputy Registrar.*

Fees of deputy registrars.

27. The deputy registrars shall be entitled to receive the following fees, that is to say :

I. A fee of twenty-five cents on the issuing of every marriage license, to be paid by the party applying for or obtaining the license.

II. Also, a fee of twenty-five cents for every clergyman's annual return of marriages, which he shall transmit to the financial secretary within the period hereinbefore prescribed, to be paid him by the postmaster general out of the marriage license fund, on the certificate of the financial secretary ; but he shall not be entitled to this fee if any of the returns he is required under this chapter to make to the financial secretary, or the quarterly return and the payment of money he is required to make to the postmaster general, be not severally made within the time required by this chapter.

III. Also, on making entry of each birth, a fee of ten cents, to be paid by the county treasurer out of the county funds.

IV. Also a fee of ten cents for every entry of death made by him under this chapter, to be paid by the county treasurer out of the county funds.

2.—*The Clergymen.*

Fees of clergymen.

28. Every clergyman shall be entitled to twenty-five cents for every return of marriage made as hereinbefore directed to the deputy registrar—provided it be made within the time and in the manner and to the effect hereinbefore prescribed, to be paid by the deputy registrar at the time of the return out of the fee deposited with him for the marriage license so returned ; and also shall be entitled to a fee of twenty-five cents for every annual return made by him within the period directed by this chapter, to be paid by the deputy registrar at the time of the return out of the marriage license funds in his hands.

PENALTIES.

Penalty for solemnizing marriage without license or banns.

29. Every person who shall officiate in the solemnization of marriage, unless under license issued in conformity with the provisions of this chapter, or under banns, or notices given in conformity with the provisions of this chapter, shall forfeit two hundred dollars.

For neglecting to give notices.

30. Every officiating minister of a congregation, who shall in violation of the fourth section refuse or neglect to give the notices directed by that section, shall, except as therein excepted, forfeit two hundred dollars, and shall be

liable to an action for damages at the suit of either of the parties aggrieved. CHAP. 120.

31. Any minister who shall use, and all persons who shall be instrumental in the using of, a marriage license that shall not have been perfected and filled up and subscribed by a deputy registrar in manner as herein directed, and any person who shall alter or assist, or be concerned in altering, any marriage license that has been so perfected, or shall celebrate or assist or be concerned in celebrating any marriage under pretence of a marriage license issued for another and different marriage, shall, for every and each of the said offences, be liable to a penalty not exceeding two hundred dollars. For using imperfect license.

32. Every clergyman who shall not within ten days after the celebration of a marriage by him under license, return the license with a certificate of the performance of the ceremony as required by this chapter, and every clergyman entitled to solemnize marriage who shall not within the time and in the manner required by the twenty-third section make the annual return of marriages therein directed, to the deputy registrar from whom he received the blank forms, or if he shall not continue to be deputy registrar, then his successor, or otherwise to the nearest deputy registrar, or in case of absence from home or illness, then within ten days after return or recovery, shall, for each neglect, forfeit for the use of the deputy registrar to whom the return should be made four dollars, and for every day after such ten days until return shall be made as required by this chapter, twelve and one half cents. For altering license.

33. Every deputy registrar who neglects or refuses, or without probable cause omits to make any entry or fulfill any duty, which by this chapter he ought to make or do, or who shall carelessly lose or injure any license or bond, register, entry, document or paper which was in his possession under this chapter, or who shall not within the periods herein prescribed make all the several returns and payments which by this chapter he ought to make, or who shall part with or allow to go out of his possession any marriage license, except in conformity with the provisions of this chapter, or who shall in any other particular do anything contrary to the provisions of this chapter, or omit to do anything therein required, shall forfeit, to be paid to the financial secretary for the use of the marriage license fund, a fine of four dollars, and the further sum of twelve and one half cents for every day for which any such return or payment shall be delayed after the time within which the same should be made. For not returning license.

34. Every person who shall knowingly or wilfully make, or shall cause to be made for the purpose of being inserted in any register of births, marriages or deaths, any false statements touching any of the particulars herein For not making annual return.

For omitting to make entries.

Person making false statement to be guilty of perjury.

CHAP. 120. required to be known and registered, shall be subject to the same pains and penalties as if such person were guilty of wilful and corrupt perjury.

Neglecting to register birth or death.

35. Any person who, being required by this chapter to notify or enter for registry any birth or death, shall fail to do so within the periods specified, shall be liable to a penalty of five dollars.

Neglecting to notify finding of new born child.

36. If any person required to give notice of the finding of any new born child, shall neglect to give such notice to some deputy registrar near the place within one week, such person shall be liable to a penalty not exceeding five dollars.

Medical practitioner failing to supply certificate.

37. Any duly qualified medical practitioner, or any coroner, failing to supply any certificate of cause of death, or any information required of them by the provisions of this chapter, within the time specified therein, shall be liable to a penalty not exceeding five dollars.

Publishing false statement of marriage.

38. Every person who shall wilfully send to any newspaper publisher, or other person, for publication in any newspaper in this province, a fictitious or false statement of the marriage or death of any person, or of the birth of any child, shall be guilty of a misdemeanor, and liable to fine or imprisonment, or both, at the discretion of the supreme court.

RECOVERY AND DISTRIBUTION OF PENALTIES AND FINES.

Penalties, how recovered.

39. All fines and fees made payable to or for the use of a deputy registrar may be sued for in the name of the party entitled as a private debt; and it shall be sufficient to state in the writ that the money is claimed for the defendant's neglect of duty, or for services performed by the plaintiff, under this chapter, as the case may be.

By whom prosecuted.

40. All fines, penalties and forfeitures which are not made payable to or to the use of the deputy registrars, may be prosecuted by the financial secretary in the county or district wherein the offence occurred. The money when recovered, after deducting expenses, shall be applied one-half to the use of the married license fund and the other half to the use of the county, to be paid to the county treasurer.

How appropriated.

Action, how conducted.

41. The actions shall be conducted as for private debts, and it shall suffice if the writs briefly state the offence committed.

Financial secretary to transcribe particulars and file papers.

42. The financial secretary shall cause to be transcribed in separate books, all the particulars communicated to him by the deputy registrars of the marriages, births and deaths, within each county; and after having extracted and entered in such books their contents, shall place in safe keeping, in separate and appropriate files, all the papers and documents, certificates, entries and returns thus received.

43. He shall also keep separate alphabetical indices of the contents of the said books, and in the index to the marriage record there shall be entered reference to the husband by his surname, and to the wife by her maiden name, and also by the surname of any husband she may have had. CHAP. 121.

To keep indices of contents of books.

44. All persons shall be entitled at all seasonable hours to search these records, and to require and to receive extracts duly certified by the financial secretary, which shall be evidence of the entry certified and *prima facie* evidence of the facts asserted or claimed in the entry. The financial secretary shall annually transmit to the several registrars of deeds throughout the province, transcripts of the entries in the books and alphabetical indices mentioned in this section, so far as the same are applicable to each county during the previous year, which transcript, certified by the financial secretary, shall be filed by the said registrars, and be accessible for examination on payment of twenty cents, and shall be *prima facie* evidence of the facts therein stated.

Books open for inspection.

Financial secretary to transmit manuscript to registrar of deeds.

Transcripts to be filed by registrar of deeds

May be examined upon payment of twenty cents.

CHAPTER 121.

OF GUARDIANS AND WARDS.

1. The father of unmarried children under the age of twenty-one years may by any instrument in writing, executed in the presence of two witnesses, dispose of the custody and tuition of such children, or of any child who at the time of his father's death may be unborn, so long as they shall respectively remain under the age of twenty-one years, or for any shorter period; and the father may make such disposition, though he be not himself of the age of twenty-one years. Guardians may be appointed by the father.

2. Judges of probate may appoint guardians to minors where none have been appointed by the father, the next of kin to be appointed if any of them shall apply, unless on special cause shewn the judge of probate shall decide to the contrary, otherwise such person as the judge shall think proper; but if the minor be of the age of fourteen years, or having had a guardian appointed by the judge of probate shall arrive at the age of fourteen years, he may appoint his own guardian, and such appointment shall be confirmed by the judge of probate, on the guardian giving the security hereinafter specified. Guardians, when and how appointed by judge of probate.

3. All guardians appointed under the provisions of this chapter shall have the exclusive control of their wards, and Power of guardian.

CHAP. 122. may maintain actions against any person who shall take them away or detain them, and shall recover damages for their benefit. They may take possession of all their property, real and personal, receive the rents and profits thereof, and manage the same during the period of their guardianship, and may maintain all actions at law or in equity in relation thereto as such children could do if of full age.

Bonds to be given; their conditions.

4. Every guardian appointed by the judge of probate, or nominated by the minor and confirmed by him, shall, previous to the letters of guardianship being issued, file in the probate court a bond, with two sureties to be approved of by the judge, and to be taken in his name, with a condition that he will faithfully manage and dispose to the best advantage of the property of the minor committed to his care, that he will not commit waste thereon, and will render a just account thereof to the court of probate when required, and to the ward when he shall come of age.

Letters, how applied for and when granted.

5. No letters of guardianship shall be granted by any judge of probate unless application therefor be made by the minor or some near relation of his, or by the executors or administrators of an estate in which the minor is interested; and the judge upon such application may appoint guardians in any suit pending before him, for the purposes of such suit, without requiring a bond.

Apprenticeships entered upon not affected thereby.

6. The provisions of this chapter shall not affect any apprenticeship which may legally have been entered into by or on behalf of any minor, or by any overseers or commissioners of the poor.

CHAPTER 122.

OF MASTERS, APPRENTICES AND SERVANTS.

Minors may be bound as apprentices or servants.

1. All children under the age of fourteen years may be bound as apprentices or servants until that age, and all minors above the age of fourteen years, may be bound as apprentices or servants; females to the age of eighteen years or to the time of their marriage within that age, and males to the age of twenty-one years, in the manner prescribed in this chapter.

Under fourteen years, how bound.

2. Children under the age of fourteen years may be bound by their father, or in case of his death or incompetency, by their mother, or by their legal guardian, and if illegitimate, they may be bound by their mother; and if they have no parent competent to act, and no guardian, they may bind themselves with the approbation of two justices of the peace.

3. Minors above the age of fourteen years may be bound in the same manner—provided that when they are bound by their parent or guardian, the consent of the minor shall be expressed in the indenture, and testified by his signing the same. CHAP. 122.
Above fourteen
how bound.

4. No minor shall be bound otherwise than by an indenture of two parts, sealed and delivered by both parties; and when made with the approbation of the justices of the peace, their approbation shall be certified in writing, signed by them upon each part of the indenture. Indenture to
be of two parts,
sealed and cer-
tified in certain
cases.

5. One part of the indenture shall be kept for the use of the minor by his parent or guardian when executed by them respectively, and when made with the approbation of two justices of the peace, it shall be deposited with the town clerk or clerk of the peace, and be safely kept in his office for the use of the minor. Custody of
minor's part.

6. The overseers of the poor may bind as apprentices or servants, the minor children of any poor person, who has become chargeable to the district, as having a lawful settlement therein, or who is supported there in whole or in part at the charge of the district; and also all minor children, who are themselves chargeable to the district as having a lawful settlement therein, or as poor persons supported by the district. Overseers of
poor may bind
out pauper
minors.

7. Such children whether under or above the age of fourteen years may be bound, females to the age of eighteen years, or to the time of their marriage within that age, and males to the age of twenty-one years; and provision shall be made in the contract for teaching such children to read, write and cypher, and for such other instruction, benefit and allowance, either within or at the end of the term, as the overseers may think reasonable. Terms of con-
tract of inden-
ture.

8. No minor shall be bound by the overseers unless by an indenture of two parts, sealed and delivered by the overseers and by the master, one part of which shall be deposited with the town clerk or clerk of the peace, and be safely kept by him for the use of the minor. Minors, how
bound by over-
seers.

9. All considerations of money or other things paid or allowed by the master upon any contract of service or apprenticeship made in pursuance of this chapter, shall be paid or secured to the sole use of the minor thereby bound. Money, &c. paid
or allowed by
master to be for
the apprentice.

10. Parents and guardians and overseers shall inquire into the treatment of all children bound by them respectively, or with their approbation, and of all who shall have been bound by their predecessors in office, and defend them from all cruelty, neglect and breach of contract, on the part of their masters. Duty of parents
guardians and
overseers re-
specting chil-
dren bound out

11. In case of any misconduct or neglect of the master, a complaint may be made in writing by the parents, guardian, or overseers, to any two justices of the peace for the Proceedings for
misconduct of
master.

CHAP. 122. county in which the master resides, setting forth the facts and circumstances of the case; and the justices, after having duly notified the master, shall proceed to hear and determine the same.

Hearing, and power of justices to afford redress.

12. After a full hearing of the parties, or of the complainants alone, if the master shall neglect to appear, the justices may order that the minor be discharged from his apprenticeship or service, and give the costs of suit against the master, and may award execution accordingly, and the minor may be thereupon bound out anew.

Proceedings where complaint is dismissed.

13. If the complaint shall not be maintained, the justices shall award costs for the master against the complainants, and shall issue execution accordingly, excepting, that in case of such a complaint by overseers, the justices shall not award costs against them, unless it shall appear that the complaint was made without reasonable cause.

Appeal for persons aggrieved.

14. Any person feeling himself aggrieved by the order of any justices under the three preceding sections, may appeal therefrom to the supreme court at its next term in the county, and such appeal shall be granted and determined in the same manner as in civil suits.

Apprentice absconding or guilty of misconduct, how punished.

15. If any apprentice or servant bound as in this chapter, shall unlawfully depart from the service of his master, or shall be guilty of any gross misbehaviour, or refusal to do his duty, or wilful neglect thereof, any justice of the peace, upon complaint on oath made to him by the master, or by any one on his behalf, may issue his warrant to apprehend the apprentice or servant, and bring him before the same or any other justice; and if the complaint shall be supported, the justice may order the offender to be returned to his master, or may commit him to the common jail for a term not exceeding twenty days, unless sooner discharged by his master.

PART III.

OF COURTS AND JUDICIAL OFFICERS, AND
PROCEEDINGS IN SPECIAL CASES.

TITLE XXXIV.

OF COURTS AND JUDICIAL OFFICERS, TRUSTS
AND ESCHEATS.

CHAPTER 123.

Amended 1868 Cap. 14

OF THE SUPREME COURT AND ITS OFFICERS.

1. The supreme court shall have within this province the same powers as are exercised by the courts of queen's bench, common pleas, chancery and exchequer in England. Powers of the supreme court
2. The terms and sittings of such court at Halifax shall be held as follows ; that is to say, there shall be two terms of such court at Halifax annually—one to commence on the third Tuesday of July, and to continué for three weeks, if the business of the court shall require such continuance, and the other to commence on the first Tuesday of December, and to continue for four weeks, if the business of the court shall require such continuance ; and the court is authorized to extend each of such terms for a further period of three days, if they shall see fit so to do ; and there shall be two sittings of the supreme court at Halifax annually, one to commence on the fourth Tuesday of October, and to continue for four weeks, if business shall require such continuance, and the other to commence on the fourth Tuesday of April, and to continue for three weeks, if the business of the court shall require such continuance ; and the court or the presiding judge is authorized to extend each of such sittings for a further period of three days, if such extension should be deemed necessary, and for such further time as may be requisite in consequence of any trial being protracted beyond the periods now provided. At Halifax, on the first day of sittings, the judges shall have the same powers as in term, and where the sittings are closed by termination of the business, or of the allotted time, the judges shall sit for three days, if business so long require, with Commence-
ment and dura-
tion of terms
at Halifax.
- Extension.
- Sittings at Hal-
ifax ; com-
mencement and
duration of.
- Extension.
- Judges at Hal-
ifax on first day
and last three
days of sittings
to have same
powers as in
term.

CHAP. 123. the same powers as in term—motions relating to the business of the then sittings to have precedence.

Grand and petit
jury, attend-
ance of.

3. The grand jury shall attend at the sittings, and shall not be required to attend at the terms of such court; and all jurors required to attend such sittings shall be subject to the penalties for non-attendance now by law established.

Sittings in
other counties,
when held, &c

4. The supreme court shall sit twice a year in the other counties at the times and places following, viz. :

LUNENBURG.

At Lunenburg on the last Tuesday of April, and on the second Thursday after the first Tuesday of October.

QUEENS.

At Liverpool on the first Tuesday of May and on the first Tuesday of October, and to continue sitting for seven days, exclusive of Sunday.

SHELburnE.

At Barrington on the second Tuesday of May.
At Shelburne on the last Tuesday of September.

YARMOUTH.

At Tusket on the third Tuesday of May.
At Yarmouth on the Tuesday next before the last Tuesday of September.

KINGS.

At Kentville on the first Tuesday of June, and on the second Tuesday of October.

DIGBY.

At Digby on the second Tuesday of June.
And at Clare on the last Tuesday of September.

ANNAPOLIS.

At Annapolis on the third Tuesday of June, and the first Tuesday of October.

HANTS.

At Windsor on the first Tuesday of June, and the last Tuesday of September,

COLCHESTER.

At Truro on the second Tuesday of June, and first Tuesday of October.

CUMBERLAND.

At Amherst on the third Tuesday of June, and second

Tuesday of October; and to sit each term if necessary CHAP. 123.
fourteen days.

CAPE BRETON.

At Sydney on the first Tuesday of June, and second Tuesday of October.

VICTORIA.

At Baddeck on the second Tuesday of June, and the third Tuesday of October.

INVERNESS.

At Port Hood on the third Tuesday of June, and the fourth Tuesday of October.

RICHMOND.

At Arichat on the fourth Tuesday of June, and on the Tuesday next after the fourth Tuesday of October.

GUYSBOROUGH.

At Guysborough on the last Tuesday of May, and the first Tuesday of October.

ANTIGONISHE.

At Antigonishe on the first Tuesday of June, and second Tuesday of October; and to sit seven days each term, exclusive of Sundays.

PICTOU.

At Pictou on the Thursday next after the second Tuesday of June, and the Thursday next after the third Tuesday of October; and to sit each term if necessary fourteen days.

5. The respective terms or sittings of the supreme court in the preceding section mentioned, shall continue so long as the business shall require, but the same shall not be continued longer than the Saturday before the day hereby appointed for opening the court at the next place to which the judge presiding at such court shall be about to proceed on his circuit, nor longer than the second Saturday after the first day of such terms or sittings respectively, except as otherwise provided in this chapter.

6. The presiding judge may direct one or more additional panel of jurors to be drawn and summoned to attend such continued sittings, in the same manner as jurors are now drawn and summoned for the second week of any term.

7. The presiding judge, if such large arrears shall be found to exist at the end of the term or sitting of any circuit court that may hereafter be held by him, having

Duration of terms or sittings mentioned in preceding section.

Jurors for extended sittings.

Presiding judge may adjourn court to future day when arrears require.

CHAP. 123. regard to the time which other official duties may leave at the disposal of himself or some other judge, may, if he shall think fit, proclaim in open court on the last day of such term or sitting, notwithstanding the period now by law limited therefor, an adjournment thereof from such day of proclamation to some future day, being a Tuesday, to be then and there named by him, when such term or sitting shall be continued and held by adjournment accordingly.

Prothonotary to cause such adjournment to be published.

8. The prothonotary of such court shall thereupon with all convenient despatch, cause such adjournment to be published by notice posted in his office and on the court house door.

Prothonotary to draw and summon jury for such adjourned term.

9. That officer shall also, in open court on such day of proclamation, draw in manner as is now by law appointed, a panel of petit jurors, consisting of the number of twenty-four, for the remainder of such adjourned term or sittings, and shall have the list signed by the presiding judge, and shall immediately thereafter issue writs of *venire facias* for the summoning of such jury, and deliver them to the sheriff of the county at least ten days before such adjourned day, and the sheriff shall cause such jurors to be summoned at least five days before such adjourned day.

Attendance of jurors at adjourned term.

10. The jurors so summoned shall be bound to attend accordingly, and be subject to such fines and penalties, and entitled to such fees and compensation, as are now by law respectively provided in respect of petit jurors.

Causes to be tried at adjourned term without new notice of trial.

11. At such adjourned term or sittings, all jury causes, civil and criminal and those only, which shall be at issue and ready for trial when such proclamation of adjournment shall have been made, shall be tried and disposed of without any new notice of trial.

Last day of term, when, &c.

12. Notwithstanding the last five sections, the said day of proclamation shall be considered the last day of the term, except as regards matters arising during the said adjourned term or sittings.

In case of judge's non-arrival in time sheriff may postpone court.

13. In case a judge shall be prevented from arriving at the place on the day appointed for holding the court or such adjourned term or sittings thereof, the sheriff shall give public notice that the court will meet on the day next following such day; and shall continue to give such notice from day to day for three successive days, unless a judge shall in the meantime arrive.

Prothonotary not to part with original papers without a judge's order.

14. The prothonotary shall not permit any original paper to be taken out of his custody without a written order from a judge, which order shall be filed.

Prothonotaries not to transmit original papers without judge's order; to give certified copies

15. The prothonotaries shall not transmit original papers to the officers in Halifax without special order from a judge, but shall, when required by any suitor or his attorney, provide certified copies to be used in place of the originals.

16. On the first day of each term the prothonotary and clerk of the crown shall make out and deliver in open court a correct statement of all fines which shall have been imposed by the court at the preceding term or sittings, together with a statement of all such as have been collected and paid to him by the sheriff since the last preceding term; and he shall annually return to the board of statistics a return in triplicate of all convictions had before, and of all fines and forfeitures imposed by, the supreme court, the amounts collected and the appropriation thereof, under a penalty of twenty dollars.

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Statements of fines to be furnished by the prothonotaries on the first day of term, and returns to be made.

17. A calendar of the criminal causes shall be sent by the clerk of the crown to the grand jury in each term, together with the depositions taken in each cause, and the names of the different witnesses; and the indictments are not to be made out, except in Halifax, until the grand jury shall so direct.

Criminal calendar and depositions to be sent to the grand jury; indictments, when made out.

18. The prothonotary shall not be obliged to issue any execution until the fees and costs due him on the judgment are paid.

Prothonotaries not bound to issue executions till fees are paid.

19. The commissioners for taking affidavits to hold to bail and recognizances of bail in the several counties, shall be appointed by the governor in council.

Commissioners for taking affidavits and recognizances of bail, how appointed.

20. Such commissioners shall have authority to allow writs of certiorari, and also to take affidavits in causes depending in court, and affidavits for holding to bail, and on which to found writs of attachment, and of summons against absent or absconding debtors, and specially to endorse writs in manner as now practised by judges of the supreme court, and subject to the same rules. They shall have the same power as the judges in relation to the rendering by bail of their principal, and they shall also have power to take the examination of witnesses aged, infirm, or about to leave the province, and to administer oaths to such witnesses.

Powers of commissioners.

CHAPTER 124.

OF PROCEEDINGS IN EQUITY.

1. In this chapter the term "the supreme court" includes the equity judge and his courts; the term "the court" means the court of the equity judge, except otherwise expressed or clearly indicated; and the jurisdiction expressed to be transferred to and to be exercised by the supreme court means the jurisdiction and powers of the judge in equity, alone, or with the associated judges, and

Definition of terms.

CHAP. 124. of the judges of the supreme court on circuit, and of the supreme court bench on appeals.

Absence of equity judge.

2. In the illness or absence of the equity judge, or in cases requiring attention in the country, the duties imposed on him shall be exercised by the other judges as the case may require.

Chancery jurisdiction given to supreme court.

3. The supreme court has jurisdiction in all cases formerly cognizable by the court of chancery, and exercises the like powers and applies the same principles of equity as justice may require, and as has formerly been administered in that court. In all causes in the supreme court in which matters of law and equity arise, the court before which they come for consideration, trial or hearing, shall have power to investigate and determine both the matters of law and equity, or either, as may be necessary for the complete adjudication and decision of the whole matter according to right and justice, and to order such proceedings as may be expedient and proper; and all writs issuable out of chancery now issue out of the supreme court.

Practice of supreme court to be observed.

4. In all cases formerly determinable in chancery and now conducted in the supreme court, the practice of the supreme court now or hereafter to be established, as far as it is applicable shall be observed, except in so far as altered or modified by statute or by rules made in pursuance of law in relation thereto; in other cases the practice of the English chancery shall be adopted.

Suits and records in chancery transferred to the supreme court.

5. All suits remaining undetermined when the chancery court was abolished, together with all the rolls, records and proceedings of the court, are transferred to the supreme court; and such suits shall be there heard and determined according to the provisions of this chapter, but with such modifications thereof as may appear to be right and proper, and for the attainment of justice in the hearing and trying of such suits so remaining undetermined in chancery. In such causes the proceedings up to the first day of August, 1855, shall continue of unimpaired efficacy and effect in the further progress of the cause, and the costs of all proceedings up to that period shall be allowed as if this chapter had not passed.

Suits, how commenced.

6. All suits heretofore cognizable in chancery shall be commenced in the same manner as personal actions, by writ of summons, in which the cause of action and the relief or remedy sought by the plaintiff, shall be briefly and clearly stated; and it shall not be necessary that the same should be set forth in any technical or formal language or manner, or that any technical or formal statement should be used.

Plea.

7. The plea or answer of the defendant shall in like manner be briefly and distinctly stated; and where the writ seeks discovery, and the plaintiff would heretofore

in chancery have been entitled to discovery, the defendant shall answer on oath fully according to the nature of the subject inquired of, although not specially interrogated. The defendant may at the same time, succinctly plead any matter of defence, the subject of a plea in such case. When the answer or plea contains new matter by way of avoidance, and not of denial merely, the plaintiff may reply succinctly. СНАР. 124.

8. Either party may demur to the pleading of the adverse party, on the same grounds; and such demurrers shall be heard and determined on the same principles as obtain in the supreme court. Demurrer.

9. After plea or answer the plaintiff may bring the cause to a hearing on writ, plea and answer, in the same manner as a suit has been formerly heard in chancery on bill and answer; but the plaintiff shall give the defendant reasonable notice that he does not intend to produce evidence. Hearing on plea, and answer.

10. In the final decision of cases on equity principles, the court shall give judgment according as the very right of the cause and matter in law shall appear unto them, and so as to afford unto the parties a complete remedy upon the principles which prevail in courts of equity, and may be applicable to the particular case. Judgments.

11. The court shall have power to direct enquiries into matters of fact and account, by masters appointed by the governor in council, who shall act on the same principles and with the same powers as masters in chancery. Every report of a master must be submitted to the court, by whom it may be confirmed, modified, or set aside, after hearing the parties. Reference to master.

12. Obedience to any judgment, rule or order of the court may be enforced by attachment or execution. Report.

13. In all cases wherein the subject in controversy, whether it be real, personal or mixed estate, be within the province, or where a trust has been created therein, or which may affect such subject, defendants residing without the jurisdiction of the court may be served with summons in like manner as if they resided within the province; but before the issue of such summons the court shall determine the form thereof, and the period to be limited for the appearance of the defendant after the service thereof, and no further proceedings shall be had against such absent parties till it shall be made to appear by affidavit to the court, that such service has taken place; and the plaintiff shall be at liberty to proceed in such manner, at such time, and subject to such conditions as the court may see fit. Obedience, how enforced.

14. In cases of foreclosure when it shall be made to appear by affidavit that a defendant is out of the province, an order may be made by the court or prothonotary for Proceedings where defendant is out of the jurisdiction of the court.

CHAP. 124. such defendant to appear on a certain day therein named, which order shall be published in the royal gazette, or in such other way, and for such time as the court or prothonotary shall direct; and the publication of such order shall be deemed good service on such defendant.

Discretion of the court regarding costs.

15. The court shall, in all equitable cases, have the same discretion in awarding or withholding costs, or directing the fund out of which they shall be paid, that is now exercised by the court of chancery.

Power of the court in cases of default of appearance.

16. In cases of default for want of appearance and plea, or where all the material facts of the case which entitle the plaintiff to equitable relief are admitted by the defendant, the court may thereupon make such order as the right and justice of the case shall require, both as regards the relief prayed for, and the costs of the suit.

Several causes of action may be united.

17. The plaintiff may unite several causes of action in the same writ, whether they be such as have heretofore been denominated legal or equitable, or both. The causes of action so united must accrue in the same right, and affect all the parties to the action, and must not require different places of trial.

Rules regarding parties to suits.

18. No defendant in any suit shall be permitted to object for want of parties, in any case to which the following rules extend:

Rule 1.—Any residuary legatee or next of kin may, without including the remaining residuary legatees or next of kin, have a judgment for the administration of the personal estate of a deceased person.

Rule 2.—Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, may, without including any other legatee or person interested in the proceeds of the estate, have a judgment for the administration of a deceased person.

Rule 3.—Any residuary devisee or heir may, without including any co-residuary devisee or co-heir, have the like judgment.

Rule 4.—Any one of several persons for whom a trust is held under any deed or instrument, may, without including any other of such persons, have a judgment for the execution of the trusts of the deed or instrument.

Rule 5.—In all cases of suits for the protection of property pending litigation, and in the nature of waste, one person may sue on behalf of himself and of all persons having the same interest.

Rule 6.—Any executor or trustee may obtain a decree against any one legatee, next of kin, or person for whom a trust is held, for the administration of the estate or the execution of trusts.

Rule 7.—In all equitable cases the court may require any other person to be made a party to the suit, and may

make such order in any particular case as he or they may deem just, for placing the defendant on the record on the same footing, in regard to costs, as other parties having a common interest with him in the matters in question. CHAP. 124.

Rule 8.—In all suits concerning real or personal estate vested in trustees under a will, settlement, or otherwise, such trustees shall represent the persons beneficially interested under the trust, in the same manner and to the same extent as the executors in suits concerning personal estate represent the persons beneficially interested in such personal estate; and in such cases it shall not be necessary to make the persons beneficially interested under the trust, parties to the suit with the trustees or executors, but the court may, upon consideration of the matters on the hearing, if he or they shall think fit, order such persons, or any of them, to be made parties.

19. It shall be competent for the court to dismiss any suit for equitable relief where the plaintiff shall not prosecute it with effect, in such reasonable time as shall be allowed him by an order in that behalf. Suits may be dismissed for want of prosecution.

20. The court may make an order for the appointment of a receiver, when necessary in any suit, which order shall state the amount of security to be given, and the terms and conditions on which the assets shall be held by him. Receiver may be appointed.

21. All costs shall be taxed by a judge, and the fees in equitable suits shall be taxed and allowed as in the title of fees. Taxation of costs.

22. Any person taking greater fees shall for such offence forfeit to the party aggrieved forty dollars, and also the amount of such excessive fees. Actions for such forfeitures shall be brought in the county where the offence was committed, and within six months next after the date of such offence. Penalty for taking greater fees.

23. In all cases whenever security is required to be given by any parties by bond or recognizance under any order of the court, except in the case of security for costs, the same shall be taken to the prothonotary of the court, *eo nomine*, and may be put in suit in the name of the prothonotary of the court for the time being. Action for forfeitures.

23. In all cases whenever security is required to be given by any parties by bond or recognizance under any order of the court, except in the case of security for costs, the same shall be taken to the prothonotary of the court, *eo nomine*, and may be put in suit in the name of the prothonotary of the court for the time being. Security, how taken.

MORTGAGES.

24. It shall be competent for a mortgagor to bring suit for the redemption of his mortgage, and for a mortgagee to bring suit for the foreclosure thereof, on the same principles as now obtain in the court of chancery. Foreclosure.

SPECIFIC PERFORMANCE, ETC.

25. The plaintiff in any suit to be brought under this chapter, may claim from the defendant a specific performance. Specific performance.

CHAP. 124. ance of his contract, and the court shall award or refuse the same, according to the right and justice of the case, and the principles which obtain in courts of equity.

When party refuses to execute an instrument.

26. Where a party to any cause shall neglect or refuse, after an order has passed therefor, to execute or acknowledge an instrument, such instrument may be executed or acknowledged by a master, and when confirmed by the court, shall have the same efficacy as if made by the party so neglecting or refusing.

Court may order execution for return of chattels.

27. The court shall have power, if they or he shall see fit so to do, upon the application of the plaintiff, in any action for the detention of any chattels, to order that execution shall issue for the return of the chattels detained, without giving the defendant the option of retaining such chattels upon paying the value assessed; and that if the said chattels cannot be found, and unless the court shall otherwise order, the sheriff shall levy on all the defendant's lands and chattels, till the defendant render such chattels, or at the option of the plaintiff that he cause to be made, of the defendant's lands or chattels, the assessed value of such chattels—provided that the plaintiff shall, either by the same or a separate writ of execution, be entitled to levy for the damages, costs and interest in such action.

WRITS OF MANDAMUS.

Action for mandamus.

28. In all cases in which the plaintiff shall claim that the defendant ought to fulfil any duty, in the fulfilment of which the plaintiff is personally interested, the plaintiff may bring his action by issuing a writ of summons, claiming, either together with any demand which may now be enforced in such action, or separately, a writ of mandamus, commanding the defendant to fulfil such duty.

Form of writ.

29. The writ in such action shall set forth sufficient grounds upon which such claim is founded, and shall set forth that the plaintiff is personally interested therein, and that he sustains, or may sustain, damages by the non-performance of such duty, and that performance thereof has been demanded by him, and refused or neglected.

Pleading.

30. The pleadings and other proceedings in any action in which a writ of mandamus is claimed shall be the same in all respects, as nearly as may be, and costs shall be recoverable by either party, as in an ordinary action for the recovery of damages.

Judgment and execution.

31. In case judgment shall be given to the plaintiff that a mandamus do issue, it shall be lawful for the court, if it shall see fit, besides issuing execution in the ordinary way for the costs and damages, also to issue a peremptory writ of mandamus to the defendant, commanding him forthwith to perform the duty to be enforced.

32. The writ need not recite the declaration or the matter therein stated, but shall simply command the performance of the duty, and in other respects shall be in the form of an ordinary writ of execution, except that it shall be directed to the party, and not to the sheriff, and may be issued in term or vacation, and returnable forthwith; and no return thereto, except that of compliance, shall be allowed, but time to return it may, upon sufficient ground, be allowed by the court, either with or without terms.

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Form of execution.

33. The writ of mandamus so issued as aforesaid, shall have the same force and effect as a peremptory writ of mandamus issued out of the court of queen's bench at Westminster, and in case of disobedience may be enforced by attachment.

Effect of writ.

34. The court may, upon application by the plaintiff, besides or instead of proceeding against the disobedient party by attachment, direct that the act required to be done may be done by the plaintiff, or some other person appointed by the court, at the expense of the defendant; and upon the act being done the amount of such expense may be ascertained by the court, either by writ of enquiry or reference to a master, as the court may order, and the court may order payment of the amount of such expenses and costs, and enforce payment thereof by execution.

Court may direct the act to be done at expense of the defendant.

35. Nothing herein contained shall take away the jurisdiction of the supreme court to grant writs of mandamus as heretofore, nor shall any writ of mandamus issued out of that court be invalid by reason of the right of the prosecutor to proceed by action for mandamus under this chapter.

Mandamus may be granted as heretofore.

36. Upon application, by motion, for any writ of mandamus in the supreme court, the rule may, in all cases, be absolute in the first instance, if the court shall think fit; and the writ may bear date on the day of its issuing, and may be made returnable forthwith, whether in term or in vacation, but time may be allowed to return it by the court or a judge, either with or without terms.

Rule for mandamus.

WRITS OF INJUNCTION.

37. In all cases of breach of contract or other injury where the party injured is entitled to maintain and has brought an action, he may, in like case and manner as hereinbefore provided, with respect to mandamus, claim a writ of injunction against the repetition or continuance of such breach of contract or other injury, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right; and he may also, in the same action, include a claim for damages or other redress.

Suit for injunction.

38. The writ of summons in such action shall be in the same form as the writ of summons in any personal action;

Writ of summons.

CHAP. 124. but on every such writ and copy thereof there shall be endorsed a notice, that in default of appearance the plaintiff may, besides proceeding to judgment and execution for damages and costs, apply for and obtain a writ of injunction.

Proceedings.

39. The proceedings in such action shall be the same, as nearly as may be, and subject to the like control as the proceedings in an action to obtain a mandamus under the provisions hereinbefore contained; and in such action, judgment may be given, that the writ of injunction do or do not issue, as justice may require; and in case of disobedience, such writ of injunction may be enforced by attachment by the court.

Writ of injunction, when and how issued.

40. It shall be lawful for the plaintiff at any time after the commencement of the action, and whether before or after judgment, to apply *ex parte* to the court, for a writ of injunction to restrain the defendant in such action, from the repetition or continuance of the wrongful act or breach of contract complained of, or the committal of any breach of contract or injury of a like kind arising out of the same contract, or relating to the same property or right; and such writ may be granted or denied by the court upon such terms as to the duration of the writ, keeping account, giving security or otherwise, as to such court shall seem reasonable and just; and in case of disobedience such writ may be enforced by attachment by the court.

How enforced.

Effect of plea entitling right to perpetual injunction.

41. It shall be lawful for the defendant in any action to plead by way of defence thereto, any matter which would entitle him to have a perpetual injunction in a court of equity against the maintenance of such action; and the matter of such defence shall, if proved, or if judgment pass by default, be a bar to such action, and the defendant shall have judgment thereon, with costs.

Order of the court in the nature of an injunction.

42. In any action in which a right shall be involved, it shall be lawful for the supreme court by a summary order, in the nature of an injunction, to be made on motion in the cause, to restrain, prevent or modify the exercise of such right by any party in the action, until a judgment shall be had establishing such right, or until such other earlier time as to the court or a judge shall seem fit, and on such terms, if any, as the court may require, and in like manner as it would have been competent to the court of chancery to have done, if such right had been contested in a suit pending therein; and in like manner to renew, vary or set aside such order from time to time as the case may require; and it shall be lawful for the court at the time of making such restraining order, if he or they shall see fit, or if it shall be required by the party against whom such order is made, to direct that an issue shall be submitted to the jury, who shall try the principal matter respecting the existence or extent of such right; referring it to the jury

also to try and inquire whether any damage or injury has been sustained by the party so injured, by the granting of such order, and the amount of such damage, if any, and such jury shall find upon the issue accordingly, and their finding shall be returned with the other findings in the case, and judgment and execution shall be given and had for the amount so found, together with the costs of the defendant occasioned by the trial of such issue. CHAP. 124.

EQUITABLE DEFENCES.

43. It shall be lawful for a plaintiff in replevin, or for the defendant in any cause in the supreme court in which, if judgment were obtained, he would have been entitled to relief against such judgment on equitable grounds, to plead the facts which entitle him to such relief by way of defence, and the court shall receive such defence by way of plea, provided that such plea shall begin with the words, "for defence on equitable grounds," or words to the like effect. Equitable defences.

44. The plaintiff may reply, by leave of the court or a judge, in answer to any plea of the defendant, facts which avoid such plea upon equitable grounds, provided that such replication shall begin with the words, "for replication on equitable grounds," or words to the like effect. Replication.

45. When such plea or replication on equitable grounds is put in, the particulars of demand and set off may be obtained as in other cases. Particulars of demand.

46. On the trial of any action of ejectment, the defendant may set up any equitable defence which would be available in the court of chancery, in case the subject matter were under adjudication in that court; and if the plaintiff shall claim title under a mortgage or other contract, or the defence be founded on any defeazance, bond for a deed, contract, or other agreement, whether the action be brought for the foreclosure of a mortgage, or otherwise, the defendant may give in evidence, tender, payment, set off or other equitable defence, if he shall, at the time of filing his plea, or subsequently by leave of the court, who are hereby empowered to grant such leave in any stage of the cause, have given notice in writing of the nature of the defence on which he intends to rely; and particulars of demand and set off may be obtained as in other actions; and in all such cases the defendant having the right of redemption or equitable estate in the lands, may pay to the plaintiff or bring into court the amount due with costs; and thereupon, the court, by rule, may compel the plaintiff to make such conveyance or release as may be agreeable to equity. Equitable defences may be set up.

47. If the justice of the case require it, the court or a judge may make an order for the sale of the premises sought to be recovered or any part thereof, and for the Tender, payment, set off, when pleadable.

Particulars of demand and set off.

Right of redemption; release of.

Sale and distribution of proceeds.

CHAP. 124. application of the proceeds, and for the release or other re-conveyance of the same, or any part thereof, at any time before the sale—provided always that before the court or a judge shall order such distribution of the proceeds, it shall be made appear that all persons interested have had reasonable notice, by advertisement or otherwise, of such application.

Non-compliance with order for sale or re-conveyance.

48. In case the plaintiff or any defendant shall refuse or neglect to make or perfect any such conveyance, the court may order such conveyance to be made by the sheriff, which when confirmed by the court or a judge, shall have the same operation and effect as if made by a master of the court of chancery under a decree or order of that court.

Writ of possession not issued without leave.

49. Where the proceedings are had under the three last sections, no writ of possession shall issue without the leave of the court.

Proceedings in equity, when barred by proceedings hereunder.

50. Any defendant having an equitable defence of which he might avail himself under section forty-six, and neglecting or refusing so to do, shall not be at liberty, without leave of the supreme court to apply for relief in equity.

REAL ESTATE OF INFANTS.

Court may order sale of real estate of infants, when.

51. An infant seized of real estate, or entitled to any term of years in lands, may, by his next friend or guardian, petition the court for an order to sell or dispose of the said property, who shall proceed in a summary way, on affidavits, to enquire into the merits of such application; and if the disposal of such property, or any part thereof, be necessary for the support of such infant, or for his education, furnished or to be furnished, or if the interest of the infant will be substantially promoted by such disposal, on account of any part of his said property being exposed to waste or dilapidation, or being wholly unproductive, or for any other reasonable cause, the court may, on the filing of a bond by such guardian or next friend, or other person approved of by the court, in case he be not already a lawfully appointed guardian, with such sureties, in such form, and on such terms and conditions as shall be directed, order the letting for a term of years, the sale, mortgage, or other disposal of such real estate or interest, whether possessory or reversionary, by such guardian or next friend, in such manner, and with such restrictions as shall be deemed expedient, but not in any case contrary to any last will or conveyance by which such estate or term was devised or conveyed to such infant, unless where the support or maintenance of the infant shall have required or shall then require it, and it shall be so expressed in the order.

52. All sales, leases, mortgages, or conveyances made in good faith by any guardian or next friend, in pursuance of such order, shall be as effectual as if made by such infant after he had attained the age of twenty-one years; and it shall not be necessary in the conveyance to recite any part of the proceedings required by this chapter, but the same shall briefly refer to the order and the sale, leasing, or other disposal of such property. The party making the sale shall file a report thereof with the prothonotary of the county in which the lands are situate.

CHAP. 124.
Effect of conveyances by guardians, &c.

53. Upon any order for the sale of any property being made as aforesaid, the court may make such order for the investment, disposal, and application of the proceeds of such property, and of the increase and interest arising therefrom, as shall secure the same for the infant's benefit.

Application of proceeds.

54. No sale made as aforesaid shall give to any such infant any other or greater interest or estate in the proceeds of such sale than he had in the estate so sold.

Infant's interest in proceeds.

55. Every conveyance made under the above provisions, and registered in the county where the lands lie, shall be taken as presumptive evidence that all the proceedings on which the same is founded were rightly had.

Conveyance.

PERPETUATING TESTIMONY.

56. When a person shall be desirous to perpetuate the testimony of any witness, he may issue a writ of summons, which shall set forth briefly his title, claim, or interest, in or to the subject concerning which he desires to perpetuate the testimony, and the names of all parties interested or supposed to be interested therein, and the names of the witnesses proposed to be examined, which shall be served on the parties interested, or supposed so to be. A notice shall be served on such parties with the writ, or subsequent to the service thereof, which shall state when and where, and before whom, the examination of each witness shall take place; but no witness shall be examined under these provisions unless the parties supposed to be interested shall have had at least ten days notice of such examination.

Suits for perpetuating testimony.

57. The examination of the witnesses shall be taken before a commissioner for the examination of witnesses *de bene esse*, and in the same way as such examinations now take place, unless on application to the court a special commissioner be appointed, when the examination shall take place before such special commissioner.

Examination of witnesses.

58. After the commissioner shall have engrossed the deposition of each witness, it shall be read to him, and he shall subscribe it, and the commissioner shall certify the time, place, and manner of his taking the deposition, and who attended at the taking thereof, and that the same was taken by him in perpetual remembrance of the facts stated therein.

Deposition and certificate of commissioner.

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To be filed in
prothonotary's
office.

In what suit the
deposition may
be used.

Attendance of
witnesses en-
forced.

Costs.

Assignee of
choses in action
may sue.

59. The deposition and certificate, together with a true copy of the notice of examination, and an affidavit of the service of such notice, stating upon whom and when the same was served, shall be filed in the office of the prothonotary of the county in which the examination shall have taken place, within ten days after the examinations.

60. If any suit shall, either at the time of taking such deposition or at any time afterwards, be pending between the person at whose instance it was taken, and the person named in the writ, or any of them, who were so notified, or any persons claiming under either of the said parties respectively, concerning the title, claim, or interest set forth in the writ, the deposition so taken, or a certified copy of it from the prothonotary's office, may be used in such suits in the same manner, and subject to the same conditions and objections, as if it had been originally in and for such suit.

61. Any witness may be subpœnæd and compelled to give his testimony in perpetual remembrance of a thing as hereinbefore prescribed, in like manner and under the same penalties as witnesses subpœnæd to attend and give evidence on the trial of a cause.

62. All costs incurred under these provisions on both sides, shall, in the first instance, be paid by the party seeking to perpetuate testimony; but in case the deposition shall thereafter be used in any suit, and he shall therein obtain a judgment, it shall be discretionary with the court to allow the costs to be costs in that suit, to be taxed against and payable by the party against whom the judgment shall be so obtained.

ASSIGNMENT OF CHOSSES IN ACTION.

63. Any assignee, by writing signed by the assignor of the entire interest in any chose in action founded on any contract for payment of money only, or in any judgment, decree or order for the payment of money only, and who would have been entitled to maintain a suit in equity, as such assignee, to enforce such contract or the payment of such money, and the executor or administrator of such assignee, shall be entitled, in his own name, to maintain such personal action in the supreme court, and have such final judgment and execution in as full a manner as the person originally entitled to such chose in action, judgment, decree or order, and whose interest has been assigned, might have had or done; and such assignee shall be so entitled, whether he shall derive immediately or remotely from the person so originally possessed of such right to sue thereon, and shall be considered to all intents and purposes, and whether for the purpose of releasing such right or discharging or satisfying such judgment, decree

or order, or otherwise, as the person originally entitled to the same had heretofore been; and it shall be lawful for any defendant in any action brought by the person so originally entitled, or by any such assignee as aforesaid, to plead by way of defence that the interest of the plaintiff in such action had been theretofore assigned in the manner prescribed by this chapter: provided, that nothing herein contained shall operate at law to transfer the right to the benefit of any bond, covenant, or agreement, collateral in its nature, unless the assignment thereof shall be made to the person entitled to the subject matter to which such bond, covenant, or agreement is so collateral, or to some person as trustee for him; and that nothing in the foregoing provision contained shall apply to any covenant running with the land. CHAP. 124.

64. Upon the execution of any such assignment, the right of the assignor to release or sue upon such chose in action, judgment, decree or order, shall wholly cease and determine; and in case it shall happen that there shall have been more than one assignment made by the same person, the assignment thereof first made *bona fide* shall operate to transfer the right to release or sue upon the same, unless the second assignment thereof shall have been accepted *bona fide* accompanied by the possession of the instrument assigned, and without knowledge of the first assignment.

Assignor not to release or sue.

65. No action shall be brought upon any such assignment by such assignee, unless a notice in writing signed by him, his agent or attorney, stating the right of the assignee, and specifying his demand thereunder, shall have been served on the party to be sued, or left at his last place of abode, at least fourteen days before the commencement of such action.

Notice of assignment to be given before action.

66. In any case in which a release of a chose in action, or a release of execution in any judgment, decree or order, shall have been executed by the assignor thereof, or payment shall have been made to him after the assignment thereof, and no notice of such assignment shall have been received by the person liable to be sued in relation to such chose in action, judgment, decree or order, it shall be lawful for such person, anything in this chapter to the contrary notwithstanding, to rely on such payment or release, by way of defence to any action brought against him in respect of such chose in action, judgment, decree or order, unless such release had been accepted, or such payment made with intent to defraud such assignee.

Effect of release by assignor without notice.

67. It shall be lawful for any defendant or person liable in respect of any such chose in action, judgment, decree or order, in any action brought in respect thereof by any such assignee, to have the same remedy and defence against the assignee and his representatives which he might have had

Defence against assignor or available against assignee.

CHAP. 125. against the assignor in case no such assignment had been made, and in case of payment to such assignee to plead such payment specially to such assignee.

CHAPTER 125.

OF AN EQUITY JUDGE—HIS OFFICE AND DUTIES.

(Passed on the 10th day of May, A. D., 1864.)

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|---|---|
| Appointment. | 1. It shall be lawful for the governor in council to appoint a competent person to be and who shall be styled |
| Salary. | judge in equity, at an annual salary of three thousand two |
| Qualifications. | hundred dollars, who shall possess the same qualifications |
| Tenure of office | for appointment, and whose tenure of office shall be the |
| Liabilities,
powers, etc. | same as judges of the supreme court, and who shall be |
| Proviso. | subject to the same restrictions and liabilities and possess |
| | the same functions, powers and privileges as a judge of |
| | the supreme court—provided that in the event of a |
| | vacancy occurring in the office of the present senior puisne |
| | judge of the supreme court no appointment shall be made |
| | to fill the same. |
| Rules of prac-
tice to be made
and published. | 2. It shall be the duty of the judge in equity to make |
| | rules to govern the proceedings and practice in equity |
| | before him; but such rules shall not go into operation |
| | until they shall have been published in the royal gazette. |
| Equity cases
and motions to
be heard and
determined by
him. | 3. In equity cases motions shall be made to him, and |
| | arguments and hearings had before him, with power to |
| | direct issues, and also to hear and determine equity causes |
| | after trials of fact have been had, and he shall hear, direct |
| | and determine all matters of equity jurisdiction; but |
| Country busi-
ness need not
be sent to him. | nothing in this act shall be construed to make it necessary |
| | to send for consideration or decision before the equity |
| | judge in Halifax, such equity business as has heretofore |
| | been or hereafter can be heard and decided by the judges |
| | in the country. |
| Judge to pre-
side on trial of
causes in equity
suits. | 4. In cases of issues directed by the equity judge in |
| | causes brought in Halifax, or issues sent from other coun- |
| | ties, when tried in Halifax, the equity judge shall preside, |
| | and shall have power to direct a jury of persons residing |
| Jury, how
drawn, sum-
moned, &c. | within the limits of the city of Halifax, to be drawn by |
| | the prothonotary from the petit jury panel of the county |
| | of Halifax, and summoned by the sheriff at such times as |
| | the judge in equity shall direct; and jurors and witnesses |
| | summoned to attend at such trials shall be entitled to the |
| | same fees for attendance and travel, and subject to the |
| Fees of jury
and witnesses. | same fines and liabilities for non-attendance, and recover- |
| | able in the same manner, as in the case of jurors and |
| | witnesses in the supreme court. |

5. Appeals from the court of probate when not decided on circuit shall be made to him; and on a vacancy occurring, he shall hold the office of vice-president of the court of marriage and divorce, and perform its duties. CHAP. 125.

6. His court, except in vacation, shall be always open, and he shall preside whenever business requires, and in the absence of the judges of the supreme court from Halifax, shall perform all the duties that may be required there of a judge of the supreme court.

7. On petition of either party, hearings in equity causes, or on appeals from the court of probate not decided on circuit, may be had before the judge in equity, with two other judges of the supreme court associated with him.

8. There shall be an appeal from the decisions of the judge in equity, and also from the decisions of the judge in equity and the associated judges, to the full bench of the supreme court, and the judge in equity and also the associated judges may be members of the court of appeal; and such appeals shall be subject to such conditions as regards stay of proceedings and costs when not provided for by legislative enactment, as may be prescribed by the rules before mentioned, and those appeals may be heard out of term if the attendance of the judges can be procured, or if heard in term such portion of the term shall be allotted for them as may be requisite and convenient.

9. The judge in equity shall sit in the supreme court in banco, and when necessary he shall sit at chambers; but it shall not be incumbent on him to preside at sittings for trials, or on the circuits, except it shall be necessary to do so through the illness of a judge or other sufficient cause.

10. The judge in equity in all equitable cases and motions before him, shall regulate and direct the proceedings, and in all hearings, motions and proceedings before him and two associated judges, he shall preside and regulate the proceedings. In full bench and in other cases, civil or criminal, legal or equitable, the chief justice shall preside and regulate the proceedings, and the judge in equity shall have precedence next to him, and in the absence of the chief justice shall preside and regulate and direct the proceedings.

11. Questions in equity in which the judge in equity may be interested, or have been professionally concerned, shall be brought before one or more judges of the supreme court, according to the nature of the case.

Judge to hear probate appeals
To be vice president of court of marriage and divorce.

Court, when open; in absence of other judges, equity judge to perform duties.

On petition of either party hearing to be had before three judges.

Appeal to full bench, when to be heard; conditions.

Judge to sit in supreme court in banco, and at chambers when necessary; to go on circuit if other judge ill.

Cases in which equity judge is to preside; his precedence, &c.

Hearing of questions in which judge is interested.

CHAPTER 126.

OF THE COURT OF MARRIAGE AND DIVORCE.

Repealed.

President and vice president of court of marriage and divorce.

*1. The governor shall be president of the court of marriage and divorce, and shall appoint by warrant under his hand and seal, the chief justice or any one of the judges of the supreme court to be vice president thereof. *

Vice president's duty.

Repealed

*2. The vice president shall sit as a member of the court when the governor is president, and shall preside in his absence.

Court, how constituted.

Repealed

*3. The court shall consist of the president, vice president, and the members of the executive council; but the vice president and any two members of the council shall constitute a court.

Jurisdiction of the court.

4. The court shall have jurisdiction over all matters relating to prohibited marriages and divorce, and may declare any marriage null and void for impotence, adultery, cruelty, pre-contract, or kindred within the degrees prohibited in an act made in the thirty second year of king Henry the eighth, entitled an act concerning pre-contracts, and touching degrees of consanguinity; and whenever a sentence of divorce shall be given the court may pronounce such determination as it shall think fit on the rights of the parties or either of them to curtesy or dower.

Examination of witnesses and the sentence of court; its power over costs.

5. The court may direct the examination of witnesses orally, and declare, by definitive sentence or otherwise, the marriage between the parties in the suit to be null and void from such time as the court may deem proper, and may allow costs and alimony to the wife during the suit, and upon its termination may award costs to either of the parties.

Power of the court to enforce its sentence.

6. The court may enforce the performance of any sentence by means of an execution similar to that issued out of the supreme court, and when any property is sold by virtue of such execution, the proceeds thereof, deducting poundage and expenses, shall be paid into the registry of the court, to be disposed of as the court may direct.

Rules, orders, &c., how signed.

7. The rules, orders, process, and other proceedings of the court, may be signed by the registrar, and the signature of the president or vice president shall not be necessary unless the court shall otherwise order.

* Substituted for Sec 1. by the Act of 1865. sec 10. "The Governor shall be President of the Court and the Judge in Equity or the Judge being, shall be Vice President thereof". At the end of the Act add the following clause: "The Court shall have power to make rules to govern its proceedings and practice; but such rules shall not go into operation until they shall have been published in the Royal Gazette."

Amended in 1865 Chap. I. Sec 11.

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CHAPTER 127.

OF THE PROBATE COURT.

1. The judge and registrar of probate in each county and district wherein a probate court is now established, shall be appointed by the governor in council, and hold office during pleasure, and shall be sworn before a judge of the supreme court or the custos of the county or district.

Judge and registrar, how appointed and sworn.

2. The judge of probate for the county or district wherein the deceased last dwelt shall have power to grant letters testamentary or letters of administration of his estate.

Judge of county where deceased last dwelt to grant probate, &c.

3. When the deceased shall die out of the province, the judge of probate for the county or district wherein any estate of such deceased person may lie, if letters testamentary or letters of administration have not been previously granted within this province, shall have power to grant the same.

Probate, &c., where granted when deceased lived out of the province.

4. When the judge of probate shall be interested in the estate of the deceased as heir, legatee, debtor or creditor, to the extent of two hundred dollars and upwards, or as executor or administrator, or when a person so interested, after proceedings have been had before the court of probate, shall be appointed judge thereof, the case shall be transferred to the probate court of any adjoining county or district, and shall then be disposed of and settled; and so soon as such estate shall be settled, the judge shall transmit to the court of probate where the deceased last dwelt, a certified copy under his hand and the seal of his court, of his proceedings therein, and such proceedings shall be entered and recorded in the books of registry of the court to which they are so transmitted—provided that when the judge shall cease to be so interested or a new judge be appointed, all future proceedings in such estate may be had and taken before him as if the same had been originally commenced before him, and in such cases the papers and proceedings shall be returned as provided in this section.

When judge interested to a certain amount case to be transferred to next county.

5. All applications for the probate of wills or letters of administration or citations shall be made in writing; all other official acts and orders shall be in writing.

Applications for probate, &c., how made: acts and orders to be in writing.

6. The registrar of the court of probate shall enter such application in the act book, and shall submit the same to the judge for his *fiat* therein.

Registrar to enter applications.

7. Whenever application shall be made to a judge of probate for filing and recording a copy of a will proved without the province, the testator having real or personal property within his jurisdiction, he shall order the regis-

Applications for filing and recording wills proved out of the province, how made;

CHAP. 127. **tr**ar to give public notice in the royal gazette newspaper at Halifax, of the application and of the time and place when the application will be heard.

proceedings thereon.

Rights of parties without the province to be reserved in applications for administration, &c.

Testimony to prove a will or touching a controversy to be in writing, and filed.

Wills, how proved when witness distant, absent or sick.

Administration, to whom granted, and in what order.

Judge may associate another in administration with the next of kin.

An administrator of a person dying out of

8. In all cases of application for letters of administration or probate, when the party or any one of several parties entitled to administration or probate is without the province, the judge shall reserve the right of such absent person, but shall proceed notwithstanding.

9. The testimony adduced before any judge of probate in relation to the proof of any will, or in any controversy before him, shall be reduced to writing and filed.

10. When any will shall be offered for probate, and the witnesses live out of the province, or more than thirty miles distant, or by reason of age or sickness are unable to appear and give evidence in court, the deposition of such witnesses in writing, taken before any person duly authorized by the judge of probate, shall have the same force and effect as if such witnesses were present and testified in open court.

11. Administration of an intestate estate shall be granted to some one or more of the persons hereinafter mentioned, and they shall respectively be entitled thereto in the following order:

First.—The widow or next of kin, or both, as the judge of probate shall think fit; and if they do not voluntarily either take or renounce administration, they shall, if resident within the county, be cited by the judge for that purpose.

Secondly.—If the persons so entitled when so duly cited shall not claim and proceed to take administration within ten days after the return day of the citation, the judge of probate may commit it to one or more of the principal creditors, if competent and willing to undertake the trust, or to any other person on the application of one or more of the creditors duly proved to be such, as he shall think fit.

Thirdly.—If the deceased were a married woman, administration of her estate shall be granted to her husband, if willing to undertake the same, unless she shall by force of a marriage settlement, or other lawful power, have made some testamentary disposition of her separate estate, or some other disposition which shall render it necessary or proper to appoint some other person to administer her estate.

12. In case such of the next of kin as shall be considered by the judge best qualified to administer in any estate shall desire it, the judge may associate with him in the administration, such person as he may think fit and proper for that purpose.

13. When administration of the estate of any person dying out of the province shall have been granted in the

place where the deceased was last domiciled out of the province, and the person to whom the same was granted shall apply to have administration of such part of the estate as may be within the province, he shall be preferably entitled thereto, and the administration to him granted by the judge of probate shall supersede any other administration thereof.

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the province
applying for ad-
ministration
within it to be
preferred.

14. Every administrator shall before entering on the execution of his trust, give bond with two sureties to be approved of by the judge in such sum as he shall order, and in the form in the annexed schedule.

Administrator
to give bonds.

15. The judge of probate may, if he shall think fit, on summary application and due proof that any bondsman on any administration bond has died, or become insolvent, order the administrator to enter into a new bond with two sureties, to be approved by the judge in such sum as he shall order; and if the administrator shall not obey such order, may cancel his authority, and thereupon proceed to appoint a new administrator in the same manner as if such administrator were deceased.

Administrator
may be requir-
ed to enter into
new bond.

16. The bond to be taken on such new administration, shall be as near as may be in the form of the administration bond, making the necessary alterations.

Bond to be in
form now used

17. Every oath administered to an executor or administrator on entering into office shall be subscribed in writing.

Oath to be in
writing.

18. The executor or administrator to whom letters testamentary or letters of administration shall have been granted, shall within three months thereafter, unless the court on petition allow further time therefor, exhibit and file in the registrar's office upon oath a full and true inventory of the real and personal estate of the deceased, which shall have come to his possession or knowledge.

Inventory to be
filed within
three months.

19. If any real or personal estate of the deceased shall come to the possession or knowledge of the executor or administrator after he shall have filed such inventory, he shall within a reasonable time thereafter, file in the registrar's office a further inventory of the same upon oath.

Further inven-
tories may be
filed.

20. Any executor or administrator neglecting to file an inventory after having been duly cited to file the same, shall forfeit twenty dollars for each month's neglect, to be recovered by any person having an interest in the estate of the deceased, in an action of debt.

Fine for neg-
lecting to file
inventory, how
and by whom
recoverable.

21. In making the inventory, the following articles shall be omitted, and shall not be considered as assets, nor be administered as such, notwithstanding the estate of the deceased should be insolvent, viz:

Articles to be
omitted from
inventory.

First.—All the paraphernalia and articles of apparel or ornament of the widow, according to the degree and estate of her husband, and also the apparel of the minor children.

Secondly.—The wearing apparel of the deceased not

CHAP. 127. exceeding forty dollars in value, which shall be distributed at the discretion of the executor or administrator, among the family of the deceased.

Thirdly.—Such provisions and other articles as shall be necessary for the reasonable sustenance of the widow and the family of the deceased for ninety days after his death.

Warrant of appraisement, when and how issued: appraisers' fees.

22. The judge on granting letters of administration, or letters testamentary, and as often afterwards as may become necessary or advisable, shall, by a warrant of appraisement, appoint two or more disinterested persons to estimate and appraise all the real and personal estate of the testator or intestate; and such appraisers shall be entitled to receive a reasonable compensation for their services for the time they may be actually employed, not exceeding two dollars for each person per day.

When property in different places there may be two or more inventories; warrant to be filed with the inventory.

23. When appraisers are so appointed, the inventory shall be made by the executor or administrator with the aid of such appraisers; and when property shall be in different and distinct places, two or more inventories may be made; and every such warrant of appraisement shall be returned and filed in the registry of probate with the inventory.

Appraiser's oath, before whom to be sworn: certificate to be on the warrant.

24. Before proceeding to make the appraisement, the appraisers shall be sworn by the judge or registrar, or a justice of the peace, truly and impartially to appraise the property which may be exhibited to them according to the best of their knowledge and ability; the taking of the oath shall be certified on the warrant of appraisement by the person administering the same.

Executors, &c., to advertise in the royal gazette: accounts to be attested according to form: cases of informal attestation provided against.

25. Every executor or administrator, previous to the payment of debts or distribution of the estate of the deceased, shall, by advertisement in the royal gazette newspaper, in all cases where the estate shall be under eight hundred dollars for one month, and in other cases for six months, call on all persons who have any demands upon the estate of the deceased, to exhibit such demands within one year from the date of the advertisement,—all which demands when exhibited shall be attested to by the party, or in his absence from the province by his agent, before the judge or registrar or a justice of the peace, and the affidavit shall be in the form in the annexed schedule, but no account shall be rejected by a judge in his final decree for any mere informality in the same, or the attestation thereof, unless he shall be satisfied that the party claiming to be a creditor shall have had notice of such informality.

License for sale, mortgage or letting of real estate where personal property insufficient to pay debts.

26. In case the personal estate of the deceased shall be found by the judge on affidavit insufficient for the payment of his debts and legacies, such judge, upon security being given by the administrator or executor to account for the proceeds of the sale or sum obtained by mortgaging

or leasing the same, may, at his discretion, grant a license for the sale of the whole or such part of the real estate of the deceased as he shall deem necessary, or for the mortgaging or leasing thereof—provided such lease be for a term not exceeding twenty-one years. CHAP. 127.

27. No such license shall be in force more than one year after the granting thereof.

License to be in force for one year only.

28. Every license shall be entered in the registrar's book, and a copy thereof duly certified by the judge or registrar shall be registered in the office of the registrar of deeds for the county or district in which the real estate may lie, and such certified copy, or a copy thereof from the registry certified under the hand of such registrar of deeds, shall be evidence of such license in all courts, without further proof.

License to be entered and registered.

Certified copy to be evidence.

29. The security to be given by any executor or administrator before the granting of such license, shall be a bond to the judge of the court of probate in a sufficient penalty with two sureties to be approved by him, the bond to be in the form in the schedule.

Security for license to be given by bond.

30. In case any executor or administrator shall not give such security within a reasonable time, the judge may, on the application of any person interested, order such executor or administrator having been first duly cited to give such security within a period in the order to be named; and if such executor or administrator without sufficient cause shall neglect so to do, the judge may appoint some other person interested in the estate to act as administrator for the sale of the real estate and appropriation of the proceeds, upon his giving the security required.

In case the executor &c., shall not give the security the judge may appoint another person to act.

31. When any part of the real estate of the testator has been undevised, and the personal estate shall be insufficient for the payment of debts, legacies and expenses, the undevised real estate shall be first sold, unless it shall appear from the will that a different arrangement of his assets for the payment of his debts or legacies was intended, in which case they shall be applied for that purpose in conformity with the provisions of the will.

Undevised real estate if any to be sold first for payment of debts, legacies, &c.

32. Where the executor or administrator shall have obtained a license for the sale of the real estate of the deceased, he shall give public notice of the time and place thereof by advertising the same in the royal gazette at Halifax, and by posting up notices thereof in the township or settlement wherein the lands lie, for thirty days previous thereto, and shall proceed to sell the same by public auction at the time and place named in the advertisement.

Notice of sale of real estate by license, how given.

33. Where the executor at the time appointed for the sale shall deem it for the interest of all persons concerned therein that the sale should be postponed, he may adjourn

Executor may adjourn sale if advisable; notice of adjournment to be given.

CHAP. 127. it for any time not exceeding thirty days, and shall give notice of such adjourned sale by posting up notices thereof.

Affidavit of executor, &c., evidence of sale.

34. The affidavit of the executor or administrator, made before a judge or registrar of probate or justice of the peace, and filed in the registry within one year after the sale, shall be admitted as evidence of the time, place and manner of the advertisement and notices.

Deeds, &c., to be as effectual as if made by deceased.

35. All deeds of conveyance, mortgages or leases, made pursuant to the license, shall have the same effect as if made by the deceased.

Administrator may be required to convey lands when intestate has contracted for the sale.

36. If the deceased at the time of his death, were liable to perform any contract for the sale and conveyance of any real or personal estate, the judge shall have power to declare the administrator trustee thereof, so far as may be necessary for performing such contract; and thereupon such administrator shall have power to execute the necessary conveyances for the performance thereof, and shall hold the purchase money, subject to the same rules of descent and distribution, as if the conveyance had been made and the consideration received in the life time of the deceased.

Conveyance under chapter.

37. Every conveyance made under the provisions of this chapter, and registered in the county where the lands lie, shall be taken as presumptive evidence that all the proceedings on which the same is founded were rightly had.

Administrator de bonis non may execute a conveyance agreed upon by deceased executor.

38. If any trustee or executor, empowered by any last will and testament to sell and convey lands of the testator, shall have heretofore made and entered into any contract for sale thereof, but shall have died before the full payment of the purchase money, and without having executed a conveyance, and there be no executor or administrator of such testator, the administrator *de bonis non* of the testator, may, upon receipt and payment of the purchase money, execute a conveyance of such lands to the purchaser or any other person entitled thereto.

Administrator de bonis non, may recover judgment by deceased executor, &c.

39. If such trustee or executor shall have brought an action on such contract or agreement against the purchaser, and obtained a judgment therein, the administrator *de bonis non* of the testator, may take proceedings to recover the amount due on such judgment under the one hundred and thirty-fourth section of chapter one hundred and thirty-four, part first; and shall, for that purpose, be held to represent the said trustee or executor.

Judge may order division of real estate amongst next of kin.

40. The judge of probate may order the real estate of the testator or intestate, wherever situate within the province, to be divided among the next of kin, and if devised according to the terms and conditions of the will, if terms and conditions be therein expressed, if otherwise, then according to the provisions of this chapter—as in cases of intestate property; and whenever the share or interest of

any such person being next of kin, shall have been transferred, the purchaser shall have the same rights and privileges, and be subject to the same liabilities as the person whose share he represents. CHAP. 127.

41. In cases where the estate is divisible among the children of a testator or intestate, and such division, or the division of any particular portion thereof, cannot be made without prejudice to the whole estate, he may order the whole, or after the division of the residue, the whole of such particular portion to the eldest son, and on his refusal, to the other sons successively, and on their refusal, to the eldest and other daughters in like succession; such son or daughter paying to the other children their shares of the value of such estate, or giving satisfactory security for the payment thereof with six per cent interest thereon.

Where division of portion cannot be made without prejudice.

*See act
1866
Cap 16
Sec 1*

42. Such order for division shall be made upon the application of a party interested, and guardians, when necessary, shall be appointed for such of the parties as shall be under age.

Guardians to be appointed for minors.

43. Where there shall be a claim for dower, or the widow shall claim any individual share or right devised by will, the judge of probate shall have power to order the same to be assigned and set off.

Assignment of dower, &c., to widow.

44. All divisions and valuations of real estate made under order of the judge of probate, shall be made by three disinterested freeholders, to be appointed by the judge for that purpose, who shall, before acting, be sworn by the judge or registrar, or by a justice of the peace, to the faithful discharge of their duty.

Divisions of real estate, how to be made.

45. No such division or valuation shall be valid unless two at least of the persons so appointed and sworn shall concur, and the judge shall approve thereof.

Two freeholders must concur in division

46. Before such approval shall be given, the parties interested, or in case one or more of them are minors the guardians, shall have eight days notice of the time and place appointed to consider the same; and where any one or more of the parties interested shall be absent, or cannot be personally served, publication of such notice in the royal gazette, at least four weeks before the day named, shall be considered sufficient service of notice.

Notice to be given before division approved by judge.

47. The judge shall confirm or reject the division, or make such amendments thereof, as he may deem right, and shall tax and award the costs of such division and valuation, and apportion the same among the parties interested in the estate as he shall deem just; and such taxation and order shall have the same effect, and be enforced in the same manner as the taxation and order mentioned in the sixty-second section.

Confirmation of judge and costs

48. Where such division is made the judge may, if necessary, order a surveyor to prepare a plan to be filed with the registrar.

Plans may be ordered by judge.

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When sale of
divisible estate
cannot be made
without prej-
udice judge may
order the whole
to one heir on
his giving secu-
rity, &c.

Order, how
made, &c.

Age of heirs,
how ascer-
tained.

Desperate
debts.

Executor, &c.,
a creditor to
file accounts
one month be-
fore distribu-
tion.

Naming a
debtor execu-
tor shall not
extinguish a
debt.

Estates, when
and how de-
clared insol-
vent; order of
insolvency may
be pleaded;
power of judge

49. In cases where the estate of a testator or intestate is divisible amongst the next of kin, being collateral heirs, and such division, or the division of any particular portion thereof, cannot be made without prejudice to the whole estate, the judge of probate may order the whole, or, after the division of the residue, the whole of a particular portion, to the eldest of the heirs that may be in the province, and on his refusal, to the other heirs so being in the province, successively, in the order of their ages, such heir paying to the other heirs their shares of the value of such estate, or giving satisfactory security for the payment thereof, with six per cent. interest thereon.

50. Such order shall be made, and guardians appointed, and other proceedings had, as prescribed by the forty-second section. The relative ages of the heirs shall be ascertained by the affidavit of the applicant as to the facts, according to his belief.

51. An executor or administrator, at any time after the lapse of twelve months from the issuing of probate or letters of administration, may file an affidavit in the registry of the court, with a schedule of desperate debts attached, containing the particulars of dates, names, and amounts, setting forth therein that such debts are, as he believes, desperate, and that he has been unable to collect the same; and thereupon the judge of probate may make an order for the equitable division of the same amongst the creditors, next of kin, or other parties entitled, or may appoint auditors for that purpose, whose judgment shall be subject to confirmation by the court; and on the division which may be ordered by the court, the parties to whom the debts are allotted shall have all the rights and remedies for the recovery in their own names of the debts assigned, which such executors or administrators possessed.

52. When the executor or administrator shall be a creditor of the estate, he shall file in the office of the registrar at least one month before the distribution of the estate, a true and correct account of all dealings between the deceased and himself, verified by affidavit in the form in the annexed schedule.

53. The naming of any person executor in a will shall not operate as a discharge of any claim which the testator had against him, but such claim shall be included as part of the estate of the deceased in the inventory, and such executor shall be liable for the same as for so much money assets of the estate in his hands at the time when such debt or demand shall be due, and shall apply and distribute the same as part of the personal estate of the testator.

54. Any executor or administrator may make oath before the judge of probate who has granted administration of the estate, that he believes the same to be insolvent, and the judge may, if he shall think fit, by an order for that

purpose, declare the estate insolvent, and the executor may plead such order in bar of any legal proceedings instituted against such executor or administrator for any cause of action accruing against the deceased; and all proceedings shall thereupon be stayed for such time as the court or a judge may order: the costs to be in the discretion of the court.

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to adjust claims on petition; appeals in such cases.

55. Upon being required by the judge of probate on the petition of any creditor or other person interested in any estate to render an account or settle the estate, the executor or administrator may apply to the judge for a citation requiring the creditors and next of kin of the deceased, and the legatees, if any, to appear before him on a day therein to be specified, and to attend the settlement of such account, the adjustment of the claims of creditors and all parties interested, and the settlement of the estate; and where the judge shall decide against any creditor, or other person interested, in respect of any controverted claim, such creditor or other person may appeal to the supreme court in like manner as is provided in this chapter in respect to appeals. Such citation shall be served personally on all those to whom it shall be directed living in the county or district of the judge, at least fifteen days before the return thereof, and upon those living out of the county or district, or whose residence may be unknown, either personally fifteen days previously or by publishing the same in the royal gazette at least four weeks before the return thereof. The citation to be in the form in the schedule.

Proceedings where executor &c, required to render an account; citations, how served, their form, &c.

56. It shall not be necessary to serve any citation preparatory to the final settlement of an estate upon any creditor whose debt shall have been paid, nor upon any legatee or next of kin, unless the judge of probate shall order such service and shall in such order name the parties to be so cited.

Citations on final settlement, to whom directed.

57. Any literate person may serve such citation, and an affidavit in writing of the service having been regularly made, by the person serving the same, taken before the judge or registrar or any justice of the peace, and filed in the registrar's office, and specifying the time and place of service, shall be sufficient; the expense of which service shall be borne by the party at whose instance the same was granted, or paid out of the estate or otherwise, as the judge may direct.

Who may serve citation; service, how verified; expense, how borne.

58. Any person interested in the estate of the deceased may attend the settlement of such account and contest the same, and any account against the estate, if not previously paid, and may obtain from the judge process to compel the attendance of witnesses.

All persons interested may contest the final settlement.

59. On making his account, every executor or administrator shall produce vouchers for all debts and legacies

Executors, &c, to produce vouchers; may

CHAP. 127. paid, and for all funeral charges and expenses; and such executor or administrator may be examined upon oath by a master under an order of the court or by the judge of probate, touching any property or effects of the deceased which have come to his hands or knowledge, and the disposition thereof, and such executor or administrator may be allowed any item of expenditure not exceeding eight dollars, for which no voucher is produced, if such expenditure be supported by his own oath positively to the fact of payment, specifying when and to whom the same was paid, and such oath being uncontradicted.

be examined upon oath; sums under forty shillings, how vouched.

Hearings may be adjourned; auditors appointed.

60. Any hearing may be adjourned from time to time as shall be necessary, and the judge may appoint one or more auditors to examine the accounts before him and to make report thereon under oath, subject to his confirmation, and may make a reasonable allowance to such auditors, to be paid out of the estate.

Final settlement and allowance of account, of what facts it shall be conclusive evidence.

61. The final settlement of the account and the allowance thereof by the judge, or upon appeal, shall be conclusive evidence against all creditors, legatees, next of kin of the deceased, and all persons in any way interested in the estate upon whom the citation shall have been served, either personally, or by publication as herein directed, of the following facts:

First.—That the charges made in such account for monies paid to creditors, to legatees, to the next of kin, and for necessary expenses, are correct.

Second.—That such executor or administrator has been charged all the interest for monies received by him and embraced in his account, for which he was legally accountable.

Third.—That the monies stated in such account as collected, were all that were collectable on the debts stated in such accounts at the time of the settlement thereof.

Costs, how allowed, taxed and recovered; review of taxation provided.

62. The judge shall tax and award such costs as are allowed by law, to be paid by the party against whom the decision may be made in any matter contested before the court, and if against the executor or administrator, to be paid out of his own estate or out of the estate of the deceased, as may be just and proper, which taxation and order shall have the like effect as a judgment in a court of record, and execution may be issued by the judge in the form in the schedule. Any such taxation or order may be reviewed by the supreme court, or by any judge at chambers, upon notice given to the party in whose favor the taxation and order may be made, without any appeal being entered and perfected, and such order made therein as to such court or judge shall seem just and proper.

Executor, &c., after eighteen months to pay all debts and make distribution.

63. Every executor or administrator, at the expiration of eighteen months from the date of the letters testamentary or letters of administration, advertisement having

been made as hereinbefore prescribed, shall pay all such legal and just claims as shall then be exhibited, so far as the estate of the deceased in his hands will enable him; and shall make such distribution of the surplus as directed by the will of the deceased or by this chapter. CHAP. 127.

64. The judge of probate on the application, after eighteen months from the date of the letters of administration or probate, of any party interested as a creditor, legatee, or next of kin, or as surety on the administration bond, may cite the executor or administrator to render an account, and to proceed to have the same settled according to law; and on the settlement of any administrator's or executor's account, the judge of probate may proceed to adjust the claims of creditors, subject to appeal, as in other cases. The costs of the proceedings on citation to render an account shall not be allowed against the executor or administrator, unless the party at whose instance such proceedings shall have been had, shall first have given ten days notice to such executor or administrator, requiring him to render such account.

Executor or administrator may be cited to account.

65. After eighteen months from the date of letters of administration, any executor or administrator may cite a co-administrator, or co-executor to account before the judge; and thereupon the judge may compel the party cited to proceed to the settlement of his account, as between him and the party at whose instance he was cited, or may order all the administrators or executors to proceed to the settlement of their accounts as prescribed in the fifty-fifth section.

Executor or administrator may cite his co-executor or co-administrator to account.

66. In the settlement of the accounts of executors or administrators, or in any matter pertaining thereto, the court of probate shall have the same power which was enjoyed by the court of chancery.

In settlement of accounts court of probate to have same power as chancery.

67. In the settlement of any estate, the executors or administrators may be allowed over and above all such actual and necessary expenses as may appear just and reasonable, a commission not exceeding five per cent on the amount received by them; and the court further may apportion such commission among the executors or administrators of any estate as may appear just and proper, according to the labor bestowed, or responsibility incurred by them respectively.

Commissions to executors, &c., how adjusted.

68. The judge of probate may order the surplus assets remaining after the settlement of an executor's or administrator's account to be distributed among the parties entitled thereto.

Distribution of surplus assets.

69. In the settlement and distribution of the insolvent estate of any deceased person, the whole of the real and personal estate remaining after payment of the funeral charges, the necessary medical and other attendance on him during his last illness, and the expenses attendant on

Order of distribution; preferential claims.

CHAP. 127. the settlement of the estate, shall be distributed among those creditors who shall have rendered their accounts duly attested, within the period before prescribed, in the following manner :

First.—Clerks, domestic and farm servants, and rent, to be paid in full for the last year previous to the death, when not more than a year's wages or rent is due; the excess to be on the same footing as other claims.

Secondly.—All other creditors to be paid in proportion to the amount of their respective debts.

Mortgages and judgments and other claims when not affected by the last section.

70. Nothing in the preceding section contained shall affect debts due on mortgages of real or personal estate, or on judgments registered in the lifetime of the deceased person, so far as the value of the property so mortgaged or lands bound by such judgment shall extend and no more, leaving the mortgagee or judgment creditor at liberty to claim as any other creditor for any balance that may remain due to him after the value of such property or lands shall have been realized; or as affecting the widow's dower in real estate, or to prevent any creditor who may not have exhibited his attested account, as before prescribed, from recovering his demands against the estate of any deceased person to such amount as may remain in the hands of the executor or administrator for distribution after the settlement of the estate; nor to affect mortgages duly executed and recorded, and judgments docketed and duly recorded before the nineteenth day of March, one thousand eight hundred and forty-two.

Judge or registrar not to be counsel, &c.

71. No judge or registrar shall be directly or indirectly employed or professionally concerned as counsel, attorney, solicitor, proctor, or advocate, for any party in any matter pending or to be brought before the court of which he is judge or registrar.

Registrar to have the charge of books, &c.—temporary registrar, how appointed.

72. The registrar shall have the care and custody of all papers and books to the probate office belonging, and in case of the death, sickness or necessary absence of the registrar, the judge may appoint and swear into office some fit person to officiate in his stead until the standing registrar shall be able to attend his duty, or until a new one be duly appointed.

Different books to be kept by registrar.

73. The registrar shall keep a book for the registration of wills, a book for the registration of decrees and orders of sale of real estate, a book of acts or a book containing a short abstract of the proceedings of the court, properly indexed.

Wills how registered.

74. In the book for the registration of wills, all original wills are to be registered, and all interlineations, alterations or apparent erasures not noticed in the attestation, are to be noted at the foot of the record, so as to be as nearly as possible an exact and liberal transcript of the original.

75. All decrees are to be regularly filed and registered. CHAP. 127.

76. All letters of guardianship and letters *ad colligendum* are to be registered.

Decrees to be filed and registered.

Letters of guardianship to be registered.

Appeals to supreme court provided; time and manner of appeal; bond when to be filed.

77. Any person may appeal from any order, sentence, decree, or denial of the judge of probate, to the supreme court at its next sitting in the same county, or directly to the supreme court in Halifax, whenever the supreme court shall meet in Halifax, previously to the sitting in the county from whence such appeal is made; which courts shall have power to confirm, alter or reverse the same, and the appellant shall, within thirty days from the making of such order, sentence, decree or denial, enter his appeal, and file in the registry of the court of probate a statement of the grounds on which the appeal is sought; and also, within ten days thereafter, shall file a bond to the judge, with two sureties to be approved by him, in the penal sum of two hundred and forty dollars, conditioned for the payment of such costs as may be awarded against him upon such appeal, and such appeal, when so perfected, shall be a stay of proceedings.

78. In case it shall appear that the ends of justice will be promoted thereby, the appeal court may remit the cause to the probate court for a further investigation of facts, or more perfect consideration, with such instructions and upon such terms as may be deemed advisable.

Cause may be remitted.

79. When an appeal shall have been duly perfected, the appellant may cause the same to be heard before any two judges of the supreme court, at chambers, upon a *rule nisi* there to be obtained; and their decision shall in all cases be subject to appeal to the supreme court in term, security for the costs of such appeal being given by the party appealing to the satisfaction of the judges who shall have given such decision, and within a time to be limited by him or them.

Hearing of appeal.

80. In case the appellant, after fourteen days notice to be given him by the respondent requiring him to enter the appeal for argument at chambers, shall neglect so to do, then the respondent shall be entitled to enter the same, and it shall be in the discretion of the judges to grant or refuse a *rule nisi*, to confirm the decision of the judge of probate.

Entering of the appeal.

81. Upon the appeal being perfected, and the fees for making the copies hereafter mentioned being paid, the judge of probate shall immediately transmit to the court in which the appeal is to be heard and determined, a copy of the appeal, and of all such papers, documents and testimony, as shall be ordered by the court, or any judge thereof at chambers, on the subject of the appeal, with a statement of the decision made by him, certified under his hand or that of the registrar.

Judge to transmit appeal, copies of papers &c., to the court of appeal.

Appeal to be made to Equity Judge when not made in probate court. See Act 1878. Chap. 1. sec. 11.

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Court of appeal may enforce return of papers on neglect of judge.

On special cause shewn appeals may be allowed within six months after the ordinary time has elapsed.

Costs may be allowed by the court of appeal and execution may issue; bonds how and when to be prosecuted.

Feigned issues may be ordered.

Forfeiture for executor's neglect to prove a will.

Administration with the will annexed may be granted where executor refuses to act.

An executor may be ordered to give bonds upon a complaint of waste.

82. If upon the appeal having been perfected, and the fees allowed in the previous section tendered, the judge of probate shall neglect to transmit the appeal and papers connected therewith to the court wherein the appeal is to be heard and determined, on due proof thereof the court may proceed to enforce the return by attachment as for a contempt.

83. The supreme court or any judge at chambers, upon special cause shewn at any time within six months after the time limited for entering and perfecting an appeal, may allow an appeal upon such terms as may seem just, in which case the same proceedings shall be had as if the appeal had been originally entered in the court of probate.

84. The court in which the appeal is heard may direct the costs thereof to be paid personally by the parties against whom such costs shall be awarded, or out of the estate which may be the subject of appeal. The payment of the costs may be enforced against the appellant by execution or suit on the bond, and against other parties by execution; but no such suit on the bond shall be commenced without the order of the court of appeal or a judge thereof.

85. The court of appeal when any matter of fact shall arise, may, if they think fit, order a feigned issue to be made up, and prescribe the manner of making the same, and direct the county in which the same shall be tried; and shall have power to grant new trials thereof, and to order by whom, and in what manner the costs attending the determination of the issue shall be paid: the final determination of such issue shall be conclusive as to the facts therein controverted.

86. Any executor, knowing of his being named as such, and neglecting, without sufficient reason, to cause the will to be proved and recorded in the probate court of the proper county, or to present such will and declare his refusal of the executorship, shall forfeit, after the lapse of the first month, twenty dollars for every month he shall neglect his duty therein, which may be recovered to his own use by any person having an interest in the estate of the deceased, in an action of debt.

87. Upon the refusal of the executor to accept the trust, the judge of probate shall commit administration of the estate, with the will annexed, to those who would have been entitled to the administration thereof if the deceased had died intestate.

88. The supreme court or court of probate may, if they shall think fit, upon summary application and upon due proof that the executor is wasting the estate, order the executor to give security for the performance of his duty, and if he shall not obey such order shall cancel his authority; and the court of probate shall thereupon appoint

another executor, who shall have full authority to proceed with the settlement of the estate. CHAP. 127.

89. The judges of probate shall have power to issue such process as may be necessary for the discharge of the trust reposed in them, and also to issue subpoenas to compel the attendance of witnesses and the production of papers material to any enquiry pending before them. The party refusing or neglecting to obey such process, or any order or decree of a judge of probate, may be punished as in the supreme court for a contempt; and all such process shall be executed by the officer to whom it is directed.

Judge empowered to issue compulsory process, and to punish for contempt.

90. All compulsory process shall be directed to the sheriff or his deputy, or to the coroner.

Compulsory process, how directed.

91. No letters *ad colligendum* shall be granted by the judge without due security being first taken.

Letters *ad colligendum*, how granted.

92. No judge of probate shall permit an original will to be in any case taken out of the province, or to be removed from the office but for the purpose of being produced in the supreme court, and then only on security being taken for its safe custody and return.

Wills when and how taken from office.

93. It shall not be necessary in any case for a party to employ a proctor or advocate in the court of probate, but every party may prepare and file his own papers and advocate his own cause therein.

Parties may file papers and advocate their own causes.

94. The value of an estate in reference to the fees payable thereon, shall be ascertained in the first instance by the oath of the administrator or executor to his belief of the value thereof, to be regulated, however, eventually by the actual amount.

Value of estates as to fees, how estimated in the first instance.

95. When the authority of an executor or administrator shall cease he may be cited to account before a judge of probate, at the instance of the person succeeding to the administration of the estate.

A previous executor, &c. may be cited by his successor to account, &c.

96. The judge of probate may, on summary application, if he shall think it for the interest of the estate so to do, order any money in the hands of the executor or administrator to be paid into any chartered bank in this province, to the credit of the estate; and when money shall be so paid the bank shall not permit the same to be withdrawn without the order of the court of probate.

Judge may order money to be paid by executor or administrator into a bank.

97. When any provision shall be made by any will for specific compensation to an executor, the same shall be deemed a full satisfaction for his services in lieu of any commission or his share thereof, unless such executor by declaration under his hand, filed in the court of probate, shall renounce all claim to such specific legacy.

A specific legacy as compensation to an executor, unless renounced shall be in lieu of commission.

98. A judge of probate shall have power to appoint a surrogate during any temporary absence, subject to the approval of the governor in council; and such surrogate during such absence shall possess all the powers, and discharge the duties, of the judge of probate.

Surrogate, appointment, powers of, &c.

CHAP. 127.

Judge may authorize persons to administer oath in certain cases.

99. Where any oath prescribed by this chapter is required to be taken before a judge or registrar, and the party to make such oath lives out of the province or more than thirty miles distant, or by reason of age or sickness is unable to appear before such judge or registrar, the oath of such party taken in writing before any person duly authorized by such judge, shall have the same effect as if taken before the judge or registrar.

Forms to be observed.

100. The forms in the annexed schedule shall be observed as near as may be in the court of probate.

SCHEDULE.

Form of affidavit to be annexed to any account or claim rendered by a creditor to an executor or administrator.

A. B. of ———, maketh oath and saith, that the foregoing paper writing doth contain a true and correct account of his demand against the estate of ———, deceased, and that all the credits to which the deceased was honestly and justly entitled, so far as deponent believes, have been given on said account; and that the balance of ——— is justly and truly owing to deponent.

Sworn before me at ———, this ——— }
day of ———, A. D., 18—.

A. B.

Citation.

Nova Scotia. County of ———, ss.

To A. B. of ———, in the county of ———,

Greeting:

Whereas, A. B., executor [*or administrator, or other person interested as the case may be,*] hath prayed that you may appear and [*here state in short forms the object,*] you are therefore required to appear before me at a court of probate, to be held at ———, within and for the said county, on the ——— day of ——— next, to [*here state in short forms the object.*]

Given under my hand and seal of the said court, this ——— day of ———, 18—.

C. D., judge of probate.

E. F., registrar of probate.

Attachment.

Probate court.

County of ———, ss.

To the sheriff of ———.

Greeting:

You are hereby required to attach by his body, if found within your bailiwick, and him safely keep, so that you may have his body before me at my office in ———, on the ——— day of ——— next coming, to answer concerning

a contempt lately by him committed in neglecting to appear before me pursuant to a subpoena issued in that behalf, [*or in case it may be for refusing to testify after appearing, for refusing to testify before me*] in a certain matter lately pending before me as a judge of probate for said county, and have then there this writ. CHAP. 127.

Given under my hand this — day of —, 18—.

C. D., judge of probate.

E. F., registrar.

Execution.

Probate court.

County of —, ss.

To the sheriff of the said county of —.

Greeting:

You are hereby required [*or in case it be an alias execution, as before,*] to levy of the goods and chattels of —, within your bailiwick, the sum of —, for costs awarded in favor of —, in a certain proceeding lately had before me as judge of probate in and for the said county, and have that money before me at my office in —, within thirty days from the date hereof, to be rendered to the said —, and for want of such goods and chattels whereon to levy you will take the body of the said —, and him safely keep until the said sum and your costs of levying this execution be paid, and make return hereof within thirty days from the date hereof.

Given under my hand this — day of —, 18 —.

C. D., judge of probate.

E. F., registrar.

Warrant of appraisement.

Nova Scotia. County of —, ss.

To A. B., &c.

Greeting:

You are hereby appointed and empowered to take an inventory of all the real estate, goods, chattels and credits, of which —, late of —, in the county aforesaid, died seized or possessed within the province, and according to your best skill and judgment truly to appraise the same, which, when completed, you are to deliver to the executor or administrator of the said deceased, to be returned together with this warrant, in three months from the date hereof.

Given under my hand this — day of —, 18—.

C. D., judge of probate.

E. E., registrar.

* S. S.

The above named appraisers personally appeared before

CHAP. 127. me and made oath that they would faithfully and impartially perform the services to which they are appointed by the above warrant.

Bond on appeal.

(The bond to be taken for ——— dollars, payable to the judge of probate in the same manner as administration bonds, and conditioned as follows :)

Whereas the above bounden ——— hath appealed from the decision of the judge of probate, made in a certain matter now pending before the said judge. Now the condition of this obligation is such that if the said ——— shall well and truly pay such costs arising from such appeal, and to such person as the court of appeal may order and direct, then this obligation to be void, otherwise to remain in full force.

Signed, sealed and delivered }
in the presence of ———. }

Administration bond.

Know all men by these presents, that we, A. B. C. D., and E. F., all of ———, in the county of ———, are held and firmly bound unto ———, judge of probate for the county of ———, in the sum of ———, to be paid to him or his successors in office, for which payment we bind ourselves, our and every of our heirs, executors and administrators, jointly and severally by these presents, sealed with our seals, dated this ——— day of ———, 18—.

The condition of this obligation is such, that if the above bounden A. B., administrator of the goods and effects of ———, deceased, do make a true inventory of the goods and effects of the deceased which have or shall come to the possession or knowledge of the said A. B., and the same do exhibit into the registry of the court of probate for the county of ———, on or before the ——— day of ——— next ensuing; and the same goods and effects, and all other the goods and effects of the deceased, at the time of his death or which at any time after shall come to the possession or knowledge of the said A. B., do administer according to law, and further do make a true account of his administration, on or before the ——— day of ———, in the year of our Lord one thousand eight hundred and ———; and all the residue of the said goods and effects which shall be found remaining upon the said administrator's account, the same being first examined and allowed by the judge of the said court, shall deliver and pay unto such persons respectively as the judge by his decree shall appoint; and if the said A. B., administrator, shall perform all orders and decrees made by the court, touching the goods and effects of the deceased, and if it shall here-

after appear that any last will was made by the deceased, CHAP. 128.
and the same be proved and allowed by the court, then if
the above bounden A. B., being thereunto required, do
deliver the said letters of administration to the said judge,
or his successor in office, then this obligation to be void.

Signed, sealed and delivered }
in the presence of ———. }

Bond on sale of real estate.

Know all men by these presents that we [*as in administration bond.*]

Whereas, license has been granted by the above named judge of probate to the above bounden executor of the last will and testament [*or administrator of all and singular the goods, chattels, credits and estate, as the case may be,*] of ———, deceased, to sell [*or lease or mortgage, as the case may be,*] the real estate of the said deceased for payment of his debts and legacies. Now the condition of this obligation is such, that if the said A. B., executor [*or administrator*] as aforesaid, shall faithfully apply all monies arising from the sale [*lease or mortgage*] of any of the real estate of the said deceased, or otherwise from the rents and profits thereof, in payment of the debts or legacies of the deceased, agreeably to law, and shall truly account for the same in his administration account, before the court of probate for the county of ——— or other court of competent authority in that behalf; and shall pay any surplus monies which may be found remaining in his hands upon such accounting unto such person as the court of probate for the said county of ——— or other court of competent authority in that behalf shall by decree appoint, then this obligation to be void.

Signed, sealed, and delivered }
in the presence of ———. }

Amended 1865, Chap. 5. Art. 6 Article 10
CHAPTER 128.

OF THE JURISDICTION OF JUSTICES OF THE PEACE IN CIVIL

Amended CASES. 1865. Chap. 1. Sec. 6.

1. In actions for debt, where the whole dealing or cause of action does not exceed twenty dollars, one justice, and where the whole dealing or cause of action exceeds twenty dollars and does not exceed eighty dollars, two justices of the county wherein the defendant resides or wherein the debt was contracted, shall have jurisdiction; and they shall have power to sue executors or administrators.

Jurisdiction of
a single justice
\$20; of two jus-
tices \$80.

CHAP. 128.

Suit, how conducted.

Jury in cases over \$20.

Account with particulars, or note, to be filed before writ shall issue.

Note to be filed on final judgment, &c.

Particulars to be annexed to summons.

Judgment by default on non-appearance.

Writs directed to and served by constable.

Copy of summons delivered to defendant five days before return.

Return of writ: how made.

Affidavit of service required, when defendant does not appear.

No arrest by capias for a debt under four dollars, nor for any debt unless under special affidavit.

2. The suit may be conducted and the amount collected upon the same rules in a summary form, and subject to a like defence as if the suit were brought in the supreme court.

3. When the whole cause of action exceeds twenty dollars and does not exceed eighty dollars, either party may obtain a jury by applying to the justices therefor at least two days before the return day of the process. No justice shall issue any writ of summons or capias unless the party applying therefor shall file a statement in writing containing the particulars of his cause of action, or of the promissory note or other instrument on which he is suing, a copy of which shall be furnished to the defendant by the justice if required. When final judgment shall have passed thereon, the statement, note, or other instrument shall be filed with the justice, and in cases of appeal shall be transmitted with the other papers in the cause.

4. A statement in writing of the particulars of the plaintiff's claim shewing both debts and credits, shall be annexed to the original summons, and a copy thereof to be prepared by the justice issuing the writ shall be annexed to the copy of such summons, and served therewith; and in case of the defendant not appearing the plaintiff shall be entitled to a judgment on default for the amount of his particulars. *(Latter part of this Sec. repealed 1865, Chap. Sec. 6)*

5. All writs shall be directed to and be served and executed by a constable of the county wherein the writ is made returnable.

6. A copy of the summons or capias shall be delivered to the defendant at least five days when the amount is under forty dollars, and when above forty dollars ten days before the return day thereof, and the constable serving the same shall, if required, explain such writ to the defendant.

7. The constable shall make return of such writ, with his doings thereon, on or before the return day, and if required by the justice shall make an affidavit of the manner in which he has served the same, and the date thereof.

8. When the defendant does not personally appear, the justice shall not proceed in the cause unless the constable shall make an affidavit that he has delivered a copy of such writ, with a statement in writing of the plaintiff's particulars annexed, to the defendant, and if by the defendant at the time of service required so to do, that he explained the contents thereof to the defendant.

9. No person shall be arrested for a debt under four dollars, nor for any debt, unless the affidavit contain an allegation that the plaintiff verily believes that unless such writ be granted the debt will be lost, and that he verily believes the defendant is about to leave the county.

Form of notice to be endorsed on Summons & Capias
 Take notice that unless forty eight hours before the return day of this summons you file the particulars of your set-off to the plaintiff's claim with the Magistrate issuing the writ, you will not be per-

10. No female or minor shall be arrested on a writ of **CHAP. 128.**
 capias issued by a justice.

Female or minor not to be arrested on capias.

11. Any person arrested on any such writ shall be admitted to bail by the officer in the same manner as in other cases of arrest; but in case the party arrested shall be committed to jail, the constable who committed him, or the sheriff, on demand of the prisoner, shall take him before the justice or justices, when and where the cause is to be tried as often as may be necessary for the trial of the cause, that he may be present during such trial, and attend to the same, and shall have him in his custody during such time, and the constable or other officer so conveying him shall, if judgment be against him for any sum, unless he shall forthwith pay the same, re-convey him to jail; but should the party so arrested appeal from any judgment, he shall, on perfecting his appeal, be forthwith discharged from prison—the constable or other officer so conveying him shall be entitled to ordinary constable fees per mile travel, to be taxed in the costs on judgment against the unsuccessful party; and the sheriff shall not be liable for any escape of the party while out of his actual custody under this section.

Persons arrested to be admitted to bail.

May be present during trial.

Shall be discharged on perfecting appeal.

Constable's fees of travel.

Escape; when sheriff not liable.

12. All causes shall be tried between the hours of ten o'clock in the forenoon and six o'clock in the afternoon of the day on which process is made returnable.

Causes; when to be tried.

13. When from the number of causes to be tried a cause cannot be heard and determined within the time specified in the preceding section, or when sufficient cause on affidavit is shown, the justice may continue the cause till some further time, not exceeding thirty days, upon such terms of costs, security, or otherwise, as he may deem right; of which continuance he shall notify the parties, plaintiff and defendant.

May be continued by justices if necessary upon terms.

14. When a jury has been demanded the justice shall issue a venire, directed to a constable not being of kin to either party or interested in the suit, commanding him to summon a jury of three persons qualified to act as petit jurors from the township or place wherein the action is to be tried, to appear at the time and place therein to be specified.

Jury how summoned.

15. Any juror so summoned who shall neglect to appear, and shall not show to the justices some sufficient excuse therefor, shall forfeit one dollar, to be levied by warrant of distress upon his goods—such warrant to be issued by the justices upon the oath of the officer that he had summoned the juror at least twenty-four hours before the time appointed for his appearance.

Fine for non-attendance of juror.

16. The jury shall be sworn by one of the justices in open court "well and truly to try the cause according to the evidence," and the evidence of the witnesses produced shall be made and delivered in the hearing and presence

Jurors, how sworn; proceedings until verdict.

CHAP. 128. of the justices and jury so empanelled; and having heard the directions of the justices, the jury shall, if they require it, retire to some convenient room under the charge of some constable, or in case no constable shall be in attendance such other person as shall by such justices be appointed for that purpose, who shall be sworn "to keep such jury together without meat or drink, and not to suffer any one to speak to them, nor to speak to them himself, without leave of the justices;" and when agreed, the jury shall return their verdict, whereupon judgment shall be given accordingly.

Challenge for cause may be made; jury how filled up.

17. Either party may challenge for cause any of the jurors, and if the challenge be allowed, or any of the jurors do not appear, the justices shall direct the constables forthwith to summon any person duly qualified, and not liable to be challenged, to fill up the jury.

Proof on oath of one witness, where action not confessed.

18. In all cases under this chapter, whether the defendant appears or not, and the plaintiff's demand or cause of action is not confessed by the defendant in person or in writing under his hand, the same shall be established on the oath of one witness.

Plaintiff's proof confined to statement filed.

19. The plaintiff shall not be permitted to give evidence of anything not contained in the statement filed by him previous to the issue of the writ.

Defendant to file or serve set-off two days before return of writ.

20. A defendant who intends to rely upon a set-off shall file the same with a justice, or serve it on the opposite party, at least two days before the return day of the summons and before trial, and he shall be precluded from giving in evidence by way of set-off anything not contained in the statement. The justice, if required, shall furnish the plaintiff with a copy thereof.

If defendant prove set-off equal to or exceeding plaintiff's demand proved, judgment accordingly.

21. Whenever the defendant shall establish a set-off equal to or exceeding the demand proved by the plaintiff, or any other sufficient defence thereto, the defendant shall have judgment; if the set-off be less than the plaintiff's demand the plaintiff shall have judgment for the residue only with costs; and if the set-off exceeds the plaintiff's demand as proved, and the whole amount of such set-off do not exceed forty dollars, the defendant shall in that case have judgment for such excess.

Where tender before suit and amount paid in, judgment for defendant.

22. When it shall appear that the defendant had tendered the amount due before suit brought, such defendant may before the trial pay the same into the hands of the justice, and shall thereupon be entitled to his costs, which shall be deducted by the justice out of the money so paid into his hands.

Successful party to have costs.

23. The party succeeding shall in all cases be entitled to his costs.

Execution, how issued in case of death of justice.

24. Where judgment has been awarded, the justice or justices before whom the suit was tried, and in case of the death, resignation, or removal of such justice or justices, any other justice, and when such cause has been tried

before two justices, in case of the death, resignation or removal of one of them, the remaining justice shall issue execution against the goods and chattels, and for want thereof against the body of such person, for the sum awarded, with costs. CHAP. 128.

25. All executions shall be made returnable in thirty days. Return of execution. 3.

26. No execution shall issue after the lapse of one year from the time of giving judgment, unless it shall be made to appear by affidavit that a balance is still due thereon, and that due diligence has been used to levy the same, in which case further executions may issue for the balance at any time within four years after the rendering of the judgment. Execution not to issue after one year from judgment except in certain special cases.

27. The constable to whom the execution shall be delivered shall proceed forthwith to levy for the sum due, and shall take sufficient goods of the party against whom the execution is issued to satisfy the same, and shall cause an advertisement, describing the goods taken, and specifying the time and place of the sale, to be posted up in two or more public places in the township or place wherein such sale is to be held, at least five days before the time appointed for such sale. Duty of constable in levying execution on personal property.

28. At the time and place so appointed, if the amount remain unpaid, the officer acting therein shall sell the goods at auction to the highest bidder, and shall forthwith return the execution, with his doings thereon, to the justice who issued the same, and pay the debt and costs levied thereon to the plaintiff or his agent duly authorized, after deducting the fees of levy and sale, returning the surplus, if any, to the person against whom the execution issued or his agent duly authorized, or in his absence to the justice for the use of such party; and if the goods shall remain unsold for want of buyers the constable may adjourn the sale for any period not less than twenty-four hours nor more than six days, and may in such case proceed to advertise anew, and sell the same after the return day of the execution. Immediately after such sale he shall make return and payment as above specified; and whatever goods remain unsold after satisfying the execution and expenses, shall be restored. Sale; how conducted; return of execution; money to whom payable; adjournment of sale; goods unsold to be restored.

29. No constable shall, directly or indirectly, purchase any goods at any sale made by him under this chapter; and every such purchase shall be absolutely void. Constables not to purchase.

30. For want of goods whereon to levy, the constable, unless otherwise directed, shall commit the person against whom the same is directed to jail. For want of goods party may be committed.

31. In case of an appeal the appellant, or in his absence his agent, before the appeal shall be allowed, shall make an affidavit in writing that he is dissatisfied with the judgment and feels aggrieved thereby, and that such appeal is Appeal and manner of proceeding thereon.

CHAP. 128. not prosecuted for the purpose of delay, and shall file the same with the justice; and the party so appealing, or in his absence his agent, shall, within ten days after the judgment, enter into a bond with sufficient surety in a penalty double the amount of the judgment, with a condition that the appellant shall enter and prosecute his appeal and perform the judgment of the court, or render the body of the appellant and pay the costs accruing on the appeal; or shall before the first day of the term of such court pay the amount of the judgment together with all costs thereon subsequently accruing, and such justice, or if the action be before two justices then the first one applied to therein, if thereto required, shall prepare the affidavit and appeal bond; which appeal, if applied for at any time within ten days after judgment in such cause, such justice or justices shall be bound to grant returnable to the next term of the supreme court in the county in which the trial was had; and execution if not issued when the appeal is applied for, and the appellant or his agent shall make or be ready to make the affidavit, shall be stayed; but in such case, if the defendant have given bail, his bail shall continue liable, notwithstanding his personal appearance, until they shall render him, or he shall give an appeal bond within the ten days herein prescribed; and if execution has issued before the appeal is applied for, it shall be stayed on the same being perfected, on the order of the issuing justice to be granted at the instance of the appellant, and duly served upon the constable.

Sureties may render appellant.

32. The securities to the appeal bond shall have the power to render the appellant, and the sheriff shall be bound to receive him at any time after the trial *de novo*, in the same manner as defendants are now rendered by bail to a *capias* issued out of the supreme court.

Parties confined to original case.

33. The judge before whom the trial *de novo* shall take place shall confine the parties to the particulars and set-off filed before the magistrate, and shall permit no amendment therein.

Justice to return papers to prothonotary, unless by consent of the parties in writing.

34. In case of appeal the justice, unless he shall receive a notice in writing signed by both parties or their agents to the contrary, shall return to the prothonotary of the supreme court, before the opening of the court on the first day of the next term in the county, all papers in the cause, with a transcript of the judgment, and the affidavit and bond whereon the appeal was allowed.

Fine for constable neglecting to return writ.

35. Any constable neglecting to serve or make return of a writ of summons or *capias*, besides being liable to an action on the case for any damage that may have been sustained, shall forfeit four dollars.

Fine and proceedings where constable neglects to return execution.

36. Any constable neglecting to return an execution for the space of ten days after the return day thereof, unless with the consent of the party in whose favor it was

issued, or to pay over within five days the monies received thereon, or to pay the surplus, if any, on demand, shall forfeit four dollars, and may also be sued in an action for money had and received; and the justices shall have jurisdiction though the sum claimed exceed forty dollars. CHAP. 128.

37. Stipendiary magistrates shall severally within their jurisdiction have and exercise all the powers and jurisdiction conferred by this chapter on two justices of the peace. Stipendiary magistrates to have same jurisdiction as two justices.

38. The forms shall be as in the schedule. Forms.

SCHEDULE OF FORMS.

Summons. (X)

County of ———, ss.

To any of the constables of the said county :

You are hereby required to summon A. B., of ———, to appear before ———, at ———, on the ——— day of ———, at ——— o'clock, in the ——— noon, to answer to C. D. in the sum of ———, and to make return thereof, on or before the said day.

Witness ——— hand and seal the ——— day of ———, 18—.

E. F., J. P. (seal.)

G. H., J. P. (seal.)

Capias. (X)

County of ——— ss.

To any of the constables of said county :

You are hereby required to take A. B. of ———, and him safely keep, so that you may have him before ——— at ——— on the ——— day of ——— at ——— o'clock, in the ——— noon, to answer to C. D. in the sum of ———, whereof fail not, and to have there then this writ, with your doings thereon.

Witness ——— hand and seal at ——— the ——— day of ———, 18—.

E. F., J. P. (seal.)

G. H., J. P. (seal.)

NOTE.—On the back of the capias, and copy thereof, to be endorsed the sum sworn to in words at length, as follows:

By oath for the sum of ———

E. F., J. P.

Execution.

County of ——— ss.

To any of the constables of the said county :

Whereas judgment hath been awarded against C. D. of ——— at the suit of A. B. for the sum of ——— and ——— more for costs. These are therefore to command

Notice to be endorsed on the Summons
Take Notice that unless forty eight hours before the
return day of this Summons you file the

CHAP. 128. you to levy from off the goods and chattels of the said C. D., such sums making together ——— by sale of such goods and chattels, after duly advertising the same, and for want thereof you are hereby required to take the body of the said C. D. and him commit to her majesty's jail, [*or where there is a lock-up house or other place of confinement in any county nearer the residence of the party to be arrested, insert the name of it in place of the jail,*] in ———, the keeper whereof is required to take the said C. D. into his custody, and him safely keep until he pay the sum above mentioned, with your fees and jailer's fee, or that he be discharged by the said A. B. or otherwise by due course of law. Whereof fail not, and make due return of this writ with your doings thereon to ——— within ——— days. Witness ——— hand and seal the ——— day of ———, 18—.

E. F., J. P. (seal.)

G. H., J. P. (seal.)

Subpœna.

County of ———, ss.

To J. K., L. M., N. O. and P. Q.

[*according to the number.*]

You and every of you are required to appear at ———, on the ——— day of ——— at the hour of ——— o'clock, in the ——— noon, to give evidence on the part of the [*plaintiff or defendant, as the case may be*] in a suit now depending between A. B., plaintiff, and C. D., defendant, and then and there to be tried, which you are not to omit under penalty of the law in such cases made and provided. Dated the ——— day of ———, 18—.

E. F., J. P. (seal.)

Subpœna ticket for each witness.

Between { A. B., plaintiff,
 and
 C. D., defendant.

J. K. is required to give evidence in this suit, on the part of the [*plaintiff or defendant, as the case may be*] at ———, on the ——— day of ———, at ——— o'clock, in the ——— noon.

Dated the ——— day of ———, 18—.

E. F., J. P.

Venire.

County of ——— ss.

To any of the constables of the said county:

You are hereby required to summon three persons duly qualified to sit as jurors, who are not of kin to either of the parties, to come and be present at ———, on the ——— day

of —, at — o'clock, in the — noon, to make a jury CHAP. 128.
 between —, plaintiff, and —, defendant. Dated
 the — day of —, 18—.

E. F., J. P. (seal.)

NOTE.—All writs of summons, capias, subpoena, and venire require but one seal, and the same, as well as all executions in cases before two justices, are to be prepared by the justice first applied to in the suit. In all cases the capias is to be endorsed by the justice first applied to, who is to prepare the affidavit also. In all suits triable before two justices, the summons and capias must be signed by two justices, and the execution in such case to have two seals, and to be signed by the two justices that issued the mesne process and tried the cause. Writs of subpoena and venire and the subpoena ticket are to be signed by one justice only; all affidavits are to be taken before and all oaths under this chapter to be administered by one justice only; and in all suits before two justices all acts required to be done by one justice only, are to be had and done by and before the justice first applied to, who is to be the keeper of all papers in the cause, and to make return of the proceedings therein in cases of appeal.

Amended as follows by act of 1865 Chap. 66.
Affidavit to obtain a capias.

A. B. of —, in the county of —, maketh oath and saith, that C. D. is justly indebted to the deponent in the sum of — after giving full credit, to the best of deponent's knowledge or belief, for all payments or offsets, and that the cause of action does not exceed eighty dollars.

and further
cannot verify between that unless a writ of
was granted the debt will be lost, and
 Sworn at —, the — day of —, before me.

E. F., J. P.

believes that he
C. D. is about to leave
the Country.

RETURNS TO THE FOLLOWING WRITS.

To a summons.

The within process was duly served on the said C. D. on the — day of — by me.

O. P., constable.

If required, the following affidavit to be made by the officer serving the process:

O. P. of — in the county of —, maketh oath and saith, that he did on the — day of — personally serve the defendant in the annexed process named, with a true copy thereof, and at the same time acquainted — with the contents thereof.

O. P.

Sworn before me at —, the — day of —, 18—.

E. F., J. P.

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To a capias.

The within named defendant was arrested and served with a copy of the within process on the — day of —, and was admitted to bail by me.

O. P., constable.

To a venire.

I have summoned the within jurors as jurors for the trial of the within cause; namely, G. H., J. K., L. M. and N. O.

O. P., constable.

To an execution.

I have levied the debt and costs as within directed.

O. P., constable.

For want of goods and chattels whereon to levy, I have taken the body of the within named C. D. and committed him to jail as within directed.

O. P., constable.

I have levied the sum of —, part of the debt and costs within mentioned, the remainder not satisfied.

O. P., constable.

I could not find any goods and chattels, or the body of the said C. D.

O. P., constable.

OATHS TO BE TAKEN BY WITNESSES, JURORS AND CONSTABLES, ON TRIALS.

Witnesses.

The evidence you shall give to the court [*or to the court and jury sworn*] touching the matter in question, shall be the truth, the whole truth, and nothing but the truth. So help you God.

Jurors.

You shall well and truly try this cause between A. B., plaintiff, and C. D., defendant, and a true verdict give according to the evidence. So help you God.

Constable or other person appointed to attend jury.

You shall keep every one of the jury sworn, and now about to make up their verdict, in some convenient place without either meat or drink; you shall not suffer any person to speak to them, nor shall you speak to them yourself, except it be to ask if they are agreed on their verdict, without the leave of the court. So help you God.

Bail bond on capias.

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Know all men by these presents that we [names, place of residence, and profession or calling of the defendant and his bail,] are held and firmly bound unto [name of the plaintiff in the suit, adding his place of residence and profession or calling] in the sum of [twice the amount sworn to and endorsed on the capias] to be paid to the said [name of the plaintiff,] his certain attorney, executors, administrators or assigns, for which payment, we bind ourselves, and every of us by himself, our and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated the — day of —, 18—.

The condition of the foregoing obligation is such, that if the above bounden [the defendant] shall appear before [name the justice or justices issuing the capias] on the — day of —, [insert the day appointed for the trial] to answer to the suit of the above named [name the plaintiff] in the sum of [here insert the sum sworn to,] then the above obligation to be void.

Signed, sealed and delivered, }	(seal.)
in the presence of }	(seal.)
— — — }	(seal.)

Affidavit to be made by the party appealing.

In the court before [name the justice or justices before whom the trial was had,] justices of the peace.

Between } A. B., plaintiff,
 } and
 } C. D., defendant.

A. B., [the party making the appeal] of —, in the county of —, the above named [plaintiff or defendant, as the case may be, or if the party for whom the appeal is made be absent, say "agent for the above named plaintiff" or defendant, as the case may be,] maketh oath and saith that he is really dissatisfied with, and feels aggrieved by the judgment given in this cause, and that he does not appeal therefrom for the purpose of delay, but that justice may be done therein.

Sworn at —, the }	To be signed by the party
— day of —, }	appealing, or in his ab-
18—, before me, }	sence, the agent.
—, J. P.	

Bond to be given on appeal being made.

Know all men by these presents, that we, A. B., C. D., and E. F., [names of the appellant if he be present, or if absent, of the agent, and the sureties, with their places of residence] are held and firmly bound to G. H. [the party against whom the appeal is allowed] in the sum of [double the amount of the judg-

CHAP. 129. *ment, debt and costs,*] to be paid to the said G. H., his certain attorney, executors, administrators or assigns, for which payment we bind ourselves, and every of us by himself, our and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated the — day of —, 18—.

Whereas a certain cause between the above bounden A. B. [*if the party appellant be the principal in the bond, or if he be absent then say between—name the appellant*] and the above named G. H. in which the said [*name the appellant*] was [*plaintiff or defendant, as the case may be*] tried before [*name the justice or justices before whom the trial was made*] justice of the peace for the county of — on the — day of —, and judgment was given in favor of the said G. H. for the sum of —, debt and costs, and an appeal therein hath been demanded on behalf of the said [*name the party appealing*]. Now the condition of the above obligation is such that if the said [*name the appellant*] at the next sitting or term of the supreme court for the county of [*name the county in which the cause was tried*] shall duly enter and prosecute his said appeal, and shall proceed therein to final judgment, and shall abide by and fulfil the judgment of the said court to be given in such appeal, or render the body of the appellant and pay the costs accruing on the appeal, or shall previous to the first day of the sitting of such court pay the full amount of judgment in such cause, together with all costs subsequently accruing thereon, then the above obligation to be void.

Signed, sealed and delivered, }
in the presence of }
— — — — — }

A. B. (seal.)
C. D. (seal.)
E. F. (seal.)

Amended B65, Cap 6.

CHAPTER 129.

OF STIPENDIARY OR POLICE MAGISTRATES.

Police division.

1. The general sessions of any county or district, upon application by petition, signed by at least fifty freeholders in any proposed police division, may, if they think fit, appoint a committee of three disinterested persons to inquire into and report upon the propriety and expediency of creating such division.

Proceedings to set off same.

2. Such committee, if approving thereof, shall assign the limits, and assign a name to any such proposed division, and report the same in writing to the court, and thereupon the clerk of the peace shall cause the substance of such

report to be advertised by notice, put up in at least two of the most public places of the proposed police district, and that the confirmation of the same will be considered at the next general session, but such notice shall not be required on reporting any application from the towns of New Glasgow or Truro; but the court may proceed at once to the confirmation of any report of a committee recommending the appointment of a stipendiary magistrate for said towns. CHAP. 129.

3. On such report being approved of by the grand jury and confirmed by the court, the place within the limits contained therein shall thenceforth be and become a police division, by the name assigned in such report, and shall be subject to the provisions of this chapter.

Report to be confirmed;

4. Within ten days after the creation of any such police division, the clerk of the peace for the county shall summon the justices residing within the limits of the division to meet at some central place therein, to carry out the provisions of this chapter; and shall attend at such meeting and record the proceedings thereof.

Meetings of justices in police division.

5. The majority of the justices present at such meeting shall proceed to select one or more of their number to be stipendiary justices for the divisions, who shall continue in office until superseded by the order of the majority of the justices residing within the division, or until they cease to be a justice of the peace.

Stipendiary justices, how appointed, &c.

6. The stipendiary justice or justices selected, or one of them, shall whenever occasion may require, or he or they may think necessary, act as a police court within the aforesaid limits, and shall have and exercise all powers necessary for the preservation of the public peace and good order, the protection of property, and the repressing offences against the sabbath, or using profane or obscene language, and also shall have power to hear and determine in a summary manner, all larcenies where the value of the goods stolen shall not exceed twenty dollars, receiving of stolen goods, assaults, batteries, riots, petty trespasses, malicious or wanton injuries to property, and breaches of the peace, committed within the limits aforesaid.

Their powers, duties, &c.

7. In districts where only one stipendiary police magistrate has been appointed, such police magistrate shall require two justices of the peace to preside with him on the trial of all larcenies, and a jury of three persons shall be sworn to try the offender, if required by him.

Where only one police magistrate appointed, on trial of larcenies, two justices to sit with him.
Jury.

8. The court shall have power to punish offenders upon conviction of any offences within their jurisdiction, by imprisonment in the lock-up house or county jail, for a period not exceeding sixty days, or by fine, not exceeding in any case twenty dollars and costs of prosecution; and in case of non-payment of the fine and costs, may commit the offender to the lock-up house or jail, for any time not exceeding sixty days.

Punishment, fines, &c.

CHAP. 129. 9. Offences shall be prosecuted in every case within two months after commission.

Limitation of action.
Conviction, &c. not to be quashed for want of form.

10. No such conviction shall be quashed for want of form, and no warrant of commitment shall be held void by reason of any defect therein, so as it be therein alleged that the party has been convicted of some offence, named therein.

Court may take recognizances for sessions or supreme court.

11. The police court shall have power to hold persons charged with offences, as under recognizances with sureties, to appear and answer in the supreme court or the court of sessions, and for want of recognizance to commit to the lock-up house or county jail.

Process, how signed.

12. All process issued by the court shall be signed by one or more of the justices.

Appointment of police constable, his powers, &c.

13. Such justice or justices on their appointment, shall appoint a police constable, who shall have power within the said limits to arrest any person who, in his presence, shall be guilty of any of the offences within the cognizance of such police justices, and take them before one or more of the justices, and if such justice shall consider it necessary, the police court shall meet and adjudicate upon the case; but no person shall be detained in custody from the time of his arrest until the hearing of his case more than thirty hours, except the arrest be made on Saturday, until his case shall be brought to a hearing; but upon a hearing the person in custody may be remanded for the procuring of evidence or other sufficient cause; but nothing herein shall prevent any person so arrested from being delivered on bail, if entitled to be so delivered; and such justice or justices may dismiss any such police constable and appoint another.

Court, when held, &c., arrest of parties remanded, bail, &c.

All persons to assist constable.
Fine.

14. All persons shall be bound on request to assist the constable in the execution of his duty, and any person refusing shall be fined not less than one dollar, nor more than four dollars, by any one of such justices.

Salaries.

15. The salaries of the stipendiary justices and constables over and above their fees hereinafter prescribed, shall be fixed by the court of sessions, and shall be assessed and collected by an equal rate upon the rateable inhabitants of the police division, in the same manner as poor rates are collected.

How collected.

16. The clerk of the peace for the county shall make out the collector's roll for the police division, and the same shall be collected by a collector for the police division, to be approved by the sessions in the same manner as other county officers.

Sessions may make regulations.

17. The general sessions shall have power to make regulations for the preservation of the peace within any such police division—provided the same shall not be repugnant to law.

18. Any such police magistrate shall in all civil matters have the same jurisdiction as is now conferred upon two justices. CHAP. 130.
Jurisdiction of
police magis-
trate in civil
matter.
Fees.

19. The fees hereinafter enumerated shall be chargeable for the services herein mentioned, viz. :

For affidavit—twenty cents.

For warrant—fifty cents.

Service of process—twenty-five cents.

Recognizance—sixty cents.

Judgment—twenty cents.

Warrant of commitment—twenty cents.

Subpœna—ten cents.

20. The seventeenth clause shall be applicable to the police court for the town of Pictou; and appeals in that court shall only be granted under the provisions of said clause. 17th clause to
apply to town of
Pictou.

21. A party aggrieved by any judgment for any sum of money as debt, damage or penalty under this chapter, shall be entitled to an appeal therefrom in the same way and on the same terms as appeals are allowed from the judgments of justices of the peace, but in no other cases. Appeal.

CHAPTER 130.

OF BARRISTERS AND ATTORNIES.

1. No person shall practise as an attorney or barrister unless he shall have been duly admitted. Attornies and
barristers to be
admitted.

2. Every person intending to apply for admission as a barrister or attorney shall cause notice thereof to be posted up in the prothonotary's office at Halifax at least one month before the commencement of the term, and his admission shall be moved for in open court within the first four days thereof. Month's notice
to be posted of
intention to ap-
ply for admis-
sion.

3. No person shall be admitted an attorney unless he shall have actually served under articles of clerkship with some practising barrister, whether such articles shall be the original articles for the whole term, or any transference thereof, or new articles for the residue of such term, for a period of five years, or if a regular graduate of any college in her majesty's dominions for the period of four years—provided such graduate shall have passed through a regular collegiate course and kept terms to entitle him to a degree and produce certificates to that effect before being articulated, or shall have kept terms for a portion of the time prescribed at one of the inns of court in Great Britain or Ireland, reckoning four terms for one year. Term of service
of clerkship.
preparatory to
admission as an
attorney.

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Examination
as to education-
al qualification.

4. No person hereafter shall be admitted as an attorney or be received as an articled clerk by any barrister until he shall have undergone an examination as to his educational qualifications, and shall have produced a certificate of his moral character, which certificate, together with that of his having passed a satisfactory examination, and a copy of his collegiate degree, if any, shall be filed with his articles in the office of the prothonotary at Halifax.

Time from
which service
shall be reckon-
ed.

5. The term of service shall commence from the time of filing a duplicate of the articles of clerkship, and the certificates required by the last section, in the prothonotary's office in Halifax.

Judges may
make rules as
to examination.

6. The judges of the supreme court may from time to time make rules regarding the examination of clerks applying to be articled, and the mode of conducting the same; and such rules made and published in the royal gazette shall have the force of law.

Qualifications
requisite for
admission.

7. Any student of the age of twenty-one years who shall file satisfactory certificates of his having complied with the requisites of the third section of this chapter, and of his good moral character from the barrister with whom he last served, and shall also undergo a satisfactory examination as to his qualification before a judge and two barristers, shall be entitled to be admitted an attorney on taking the following oath:

Attorney's oath.

"I, A. B., do swear that I will truly and honestly demean myself in the practice of an attorney, solicitor, or proctor, in all and every of the courts of this province in which I shall be employed as such, according to the best of my knowledge and ability."

Barristers of
Great Britain
or Ireland enti-
tled to admis-
sion on filing
proper certi-
ficates.

8. A barrister of any court in Great Britain or Ireland shall be entitled to be admitted to practise as a barrister and attorney on filing a satisfactory certificate of his being a barrister at the time of application and of his good moral character.

Colonial barris-
ters and attor-
nies, and attor-
nies of Great
Britain and Ire-
land entitled to
admission on
filing proper
certificate.

9. A barrister or attorney of any court in her majesty's colonies, and an attorney of any court in Great Britain or Ireland, on filing a satisfactory certificate of his being a barrister or attorney at the time of application and of his good moral character, and also of his having served as an articled clerk for a term equal to that hereinbefore prescribed for articled clerks in this province, and who shall undergo a satisfactory examination as hereinbefore provided for, shall be entitled to be admitted an attorney on taking the foregoing oath.

Barristers
when admitted.

10. An attorney of the supreme court shall be entitled to be admitted a barrister immediately after his admission as an attorney.

Attorney not to
allow any other
person than his
articled clerk
or another at-
torney to sue or
defend causes
in his name.

11. No attorney shall permit any person not an attorney, other than his articled clerk actually serving in his office, to sue out any writ of process, or to prosecute or defend any action in his name:

12. Barristers of the supreme court shall be counsel, CHAP. 131.
advocates, proctors and solicitors of the court of chancery,
court of vice admiralty, court of error, court of marriage
and divorce, and all courts within this province, and as
such shall be entitled to prosecute and defend all causes
therein, and shall have such seniority and pre-audience
therein as they are entitled to in the supreme court; but
nothing herein contained shall interfere with or affect the
wholesome control which the queen's courts are authorized
to exert over the several practitioners therein, or to pre-
vent such court from suspending, silencing, dismissing or
striking off the roll any barrister, advocate, attorney, soli-
citor or proctor for mal-practice or misconduct.

Barristers, their
privileges and
precedence;
power of courts
to control all
practitioners.

13. No barrister shall have at any one time more than
three articulated clerks.

No barrister to
have more than
three articulated
clerks at once.
Practising bar-
risters only to
take clerks.

14. No barrister not actually practising his profession,
except only the prothonotary at Halifax, being a barrister,
shall take or retain any clerk.

15. Every notary public, being a barrister of the
supreme court of this province, is hereby empowered to
take acknowledgments of married women of the execution
of deeds throughout this province, and to administer oaths
to subscribing witnesses to deeds relative to the execution
of the same throughout this province, and to certify all
such acknowledgments of married women and of the
attestations of such witnesses in the same manner and to
the same extent as a justice of the peace is now authorized
to do. No fee shall be charged or taken by any notary
public for services performed under this section.

Notary public
being a barris-
ter to take
acknowledg-
ments, &c., to
same extent as
justice of the
peace.

*not necessary to
take oaths relative
to seal*

No fees for
such services.

CHAPTER 131.

OF TRUSTS AND TRUSTEES.

1. The several words hereinafter named are herein used
and applied as follows respectively, that is to say:

The word "seized" shall be applicable to any vested
estate for life, or of a greater description, and shall extend
to estates at law or in equity, in possession or in futurity,
in any lands.

Definition of
words.

"Seized."

The word "possessed" shall be applicable to any vested
estate less than a life estate at law, or in equity, in posses-
sion, or in expectancy, in any lands.

"Possessed."

The words "trust" and "trustee" shall extend to and
include implied and constructive trusts, and shall extend
to and include cases where such trustee has some beneficial
estate or interest in the subject of the trust.

"Trust."
"Trustee."

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Construction
of words not
defined.

In case of infant
trustee, court
may make such
order.

If trustee is out
of jurisdiction,
court may
make such
order.

If joint trustee
is out of juris-
diction.

In case of doubt
as to which
trustee was sur-
vivor.

In case it is not
known whether
trustee last
seized is living
or dead.

In case trustee
died intestate
without heir or

All other words not hereinbefore defined, but herein-
after used, shall be construed, as nearly as may be, in the
sense in which corresponding words are defined in the
English 'trustee act of 1850.'

2. Where any infant shall be seized or possessed of any
lands upon any trust it shall be lawful for the supreme
court to make an order vesting such lands in such person
in such manner and for such estate as the court shall
direct, and the order shall have the same effect as if the
infant trustee had been twenty-one years of age, and had
duly executed a conveyance or assignment of the lands in
the same manner and for the same estate.

3. When any person solely seized or possessed of any
lands upon any trust, shall be out of the jurisdiction of the
court, or cannot be found, it shall be lawful for the court
to make an order vesting such land in such person in such
manner and for such estate as the court shall direct; and
the order shall have the same effect as if the trustee had
duly executed a conveyance or assignment of the lands in
the same manner and for the same estate.

4. When any person shall be seized or possessed of any
lands jointly with a person out of the jurisdiction of the
court or who cannot be found, it shall be lawful for the
court to make an order vesting the lands in the person so
jointly seized or possessed, or in such last mentioned per-
son, together with any other person, in such manner and
for such estate as the court shall direct; and the order
shall have the same effect as if the trustee out of the
jurisdiction, or who cannot be found, had duly executed a
conveyance or assignment of the lands in the same man-
ner and for the same estate.

5. Where there shall have been two or more persons
jointly seized or possessed of any lands upon any trust,
and it shall be uncertain which of such trustees was the
survivor, the court may make an order vesting such lands
in such person in such manner and for such estate as the
court shall direct; and the order shall have the same effect
as if the survivor had duly executed a conveyance or
assignment of the lands in the same manner for the same
estate.

6. Where any one or more persons shall have been
seized or possessed of any lands upon any trust, and it
shall not be known, as to the trustee last known to have
been seized or possessed, whether he be living or dead, the
court may make an order vesting such lands in such per-
son, in such manner and for such estate as the court shall
direct; and the order shall have the same effect as if the
last trustee had duly executed a conveyance or assignment
of the lands in the same manner for the same estate.

7. When any person seized of any lands upon any
trust shall have died intestate as to such lands without an

heir, or shall have died, and it shall not be known who is his heir or devisee, the court may make an order vesting such lands in such person in such manner and for such estate as the court shall direct; and the order shall have the same effect as if the heir or devisee of such trustee had duly executed a conveyance of the lands in the same manner for the same estate.

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heirs or devisees not known.

8. Where any person jointly or solely seized or possessed of any lands upon any trust shall, after demand, by a person entitled to require a conveyance or assignment thereof, or his lawful agent, have stated in writing that he will not convey or assign the same, or shall neglect or refuse to do so for twenty-eight days next after a proper deed for that purpose, shall have been tendered to him, it shall be lawful for the courts to make an order vesting such lands in such persons, in such manner and for such estate as the court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance or assignment in the same manner for the same estate.

In case trustee will not convey to person entitled.

9. Where lands subject to a trust have been or shall be converted into money by the operation of any law relating to provincial railways, such money shall be considered as land for the purpose of this chapter, and shall be dealt with, as nearly as may be, in conformity to the provisions thereof.

In case land subject to trust has been converted into money by operation of laws relating to railways.

10. In every case where the court shall, under this chapter, be enabled to make an order having the effect of a conveyance or assignment of any lands, it shall be lawful for the court, should it be deemed more convenient, to make an order appointing a person to convey or assign such lands, and the conveyance or assignment of the person so appointed shall, when in conformity with the terms of the order by which he is appointed, have the same effect in conveying or assigning the lands as an order of the court would, in the particular case, have had under this chapter.

Court may appoint person to convey.

Effect of conveyance.

11. An order under any of the hereinbefore contained provisions concerning any lands subject to a trust, may be made upon the application of any person beneficially interested in such lands, whether under any disability or not, or upon the application of any person duly appointed as a trustee thereof.

Persons upon whose application orders may be made.

12. Where any person shall deem himself entitled to an order under this chapter from the court, he may exhibit before any one of the masters of the court a statement of the facts whereon such order is sought to be obtained, and adduce evidence in support thereof; and if such evidence shall be satisfactory to the master, he shall give a certificate under his hand of the several material facts found by him to be true, and of his opinion that such per-

Person applying for order, to obtain certificate from master.

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Motion thereon

13. Any person who shall have obtained such certificate, may apply by motion to the court for an order to the effect set forth in such certificate, or for such other order as such person shall deem himself entitled to upon the facts found by the master.

May apply by petition and affidavit.

14. Any person so entitled to apply for an order may, should he so think fit, present a petition in the first instance to the court for such order as he may deem himself entitled to, and may give evidence by affidavit or otherwise in support of such petition before the court, and may serve such person as he may deem entitled to service thereof.

Proceedings upon hearing petition, &c.

15. The court may, upon the hearing of such petition, direct a reference to a master to enquire into any facts which require such an investigation, or the court may direct such a motion or petition to stand over, to enable the petitioner to adduce evidence or further evidence before the court, or to enable notice or further notice of such motion or petition to be served upon any person.

Costs.

16. Upon the hearing of such motion or petition, whether any certificate or report of a master shall have been obtained or not, the court may dismiss such motion or petition with or without costs, or make an order thereupon, in conformity with this chapter.

When facts proved, court may make order.

17. Whensoever, either by the evidence or the admissions of the parties or by a report of a master, the facts necessary for an order under this chapter shall appear to the court to be sufficiently proved, the court may, either upon the hearing of the cause or of any petition or motion, make such order under this chapter.

Order founded on allegation of incapacity or absence of trustee to be evidence of matter alleged.

18. Whenever any order shall be made under this chapter for the purpose of conveying or assigning any lands, and such order shall be founded on an allegation of the personal incapacity of a trustee, or on an allegation that a trustee is out of the jurisdiction of the court, or cannot be found, in such case the fact that the court has made an order upon such an allegation, shall be conclusive evidence of the matter so alleged in any court of law or equity upon any question as to the legal validity of the order—provided that nothing herein contained shall prevent the court directing a re-conveyance or re-assignment of any lands conveyed or assigned by any order under this chapter; and it shall be lawful for the court to direct any of the parties to any suit concerning such lands to pay any costs occasioned by the order under this chapter, when the same shall appear to have been improperly obtained.

Court may direct re-conveyance and payment of costs of order improperly obtained.

Proceedings when process cannot be served on trustee.

19. When, in any suit in such court, it shall be made to appear by affidavit that diligent search and enquiry has been made after any person made a defendant, who is only

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a trustee, to serve him with the process of the court, and that he cannot be found, it shall be lawful for the court to hear and determine such cause, and to make an absolute decree therein against every person who shall appear to them to be only a trustee, and not otherwise concerned in interest in the matter in question, in the same manner as if such trustee had been duly served with process, and had appeared; and filed his answer thereto, and had also appeared by his counsel and solicitor at the hearing of such cause—provided always that no such decree shall bind any person against whom the same shall be made without service of process upon him, for or in respect of any estate or interest which such person shall have at the time of the making of such decree for his own use or benefit, or otherwise than as a trustee.

20. When any person shall, under this chapter, apply to a master in the first instance, and adduce evidence for obtaining a certificate as foundation for an order, the master may order service of such application on any person, or dismiss it, and direct the costs of any person consequent thereon, when taxed by a judge, to be paid by the applicant; and all orders of a master under this chapter shall be enforced by execution when directed by a judge.

21. The court may order the costs and expenses of, and relating to the petitions, orders, directions, conveyances, and assignments, to be made in pursuance of this chapter, or any of them, to be paid and raised out of, or from the lands or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the court shall think proper.

22. Upon any petition, under this chapter, to the court, it shall be lawful for the court to postpone making any order upon such petition until the right of the petitioner shall have been declared in a suit duly instituted for that purpose.

23. All the powers conferred by this chapter upon the court, may be exercised by two of the judges thereof.

Proviso.

On application to master he may order the service of application or dismiss with costs.

Orders how enforced.

Court may order costs to be paid out of proceeds of lands.

Court may postpone order until right of petitioner is declared in a suit.

Powers may be exercised by two judges.

CHAPTER 132.

OF ESCHEATING LANDS FORFEITED TO THE CROWN.

1. The governor in council may direct the attorney general, or in his absence the solicitor general, to file inquests of office in the supreme court of any county where the lands lie, for re-investing in the crown lands that have been granted; but which shall have been for-

Inquests of office, by whom filed, where, &c.

CHAP. 132. feited to the crown in whole or in part for non-fulfilment of the conditions in the grant.

Notice of in-
quests, how
given.

2. A notice of the inquest, with a brief description of the lands therein, shall be published in the royal gazette, at least twice, and posted up at the door of the court house, and in at least five other public places in the county, within the period of three months before the commencement of the term; and if any person be living on the lands, or in actual possession and cultivation of the same, or any part thereof, a copy of the notice shall also be delivered to him.

Penalty in case
tenant neglects
to inform land-
lord of notice,
how recovered.

3. If any tenant shall wilfully neglect to give information of the notice to his landlord, in case he shall be within the province, or to his known attorney, or agent, in case he shall be absent therefrom, he shall forfeit a sum not exceeding four hundred dollars, to be recovered by the party injured.

Proceedings in
case of non-ap-
pearance.

4. Upon proof of such notice, if there be no appearance and plea, by a party who shall be entitled to traverse the inquest, the court, upon hearing evidence which shall be taken in writing by the judge in the usual manner and filed with the prothonotary, and being satisfied of the non-fulfilment of the conditions of the grant, shall give judgment, re-investing the lands in whole or in part in the crown; whereupon the usual costs shall be taxed, and being certified by the judge, shall be paid out of the treasury.

Costs, how paid,
&c.

Proceedings in
case of appear-
ance and plea.

5. Should such appearance and plea be put in, the cause shall be tried in the same way as other causes at common law; if judgment pass for the crown the defendant shall be liable for the usual costs; and if the defendant succeed, his costs to be taxed in like manner and certified by the judge, shall be paid by the commissioner of crown lands.

Costs.

Inquest may in-
clude any num-
ber of lots in
one county, but
trials to be se-
parate.

6. Any number of lots within the county may be included in the same inquest, but the traverses and trials shall be separate.

Where grant
includes sever-
al lots, &c., for-
feiture of each
lot to depend
upon perform-
ance of condi-
tions respect-
ing it.

7. Where one grant includes several lots, or where under one grant separate allotments are subsequently assigned to grantees or their assigns, the liability to forfeiture of each lot shall depend upon the performance of the conditions in respect of that particular lot.

Plea, nature of.

8. The plea traversing the inquest shall be confined to a simple denial of the liability to forfeiture under the terms of the grant, and of this chapter, and no other plea shall be allowed unless by special leave of a judge.

Granting of es-
cheated lands.

9. Land so escheated shall not be granted to any person except to the original owner, his heirs or assigns, before the expiration of one year from the date of the judgment.

TITLE XXXV.

CHAPTER 133.

OF MUNICIPALITIES.

1. Any county may have the benefit of municipal government, and the desire of a county to be incorporated hereunder shall be ascertained and testified in manner following :

Desire to be incorporated, how testified, &c.

If one hundred persons, certified by two justices of the peace to be freeholders, shall present a requisition to the sheriff to that effect, he shall name a day and place for holding simultaneously a meeting in each electoral district in the county, and shall appoint a presiding officer and clerk of each district; of which meeting notice ten days previously shall be given in three of the most public places of each district, by printed handbills with a copy of the petition affixed, setting forth the object.

Meeting, votes.

The sheriff and presiding officers shall, at the time and place appointed in each electoral district, convene the meeting and receive the votes for or against the county incorporation, to be given by the persons present qualified to vote for members of assembly, resident within the district, which voters and their votes, the clerk shall take down in writing.

The meetings shall be held from nine o'clock in the morning till three o'clock in the afternoon, when the meetings shall be closed, and the presiding officer shall seal up the list of voters, and their votes, and return the same to the sheriff.

Meetings, when opened.

The return shall be publicly opened and counted by the sheriff in the presence of the clerk of the peace, on a day and at a place to be previously appointed, and a majority of the whole votes shall decide the question.

Return.

The sheriff shall return the result to the governor in council; if in favor of incorporation, the governor by proclamation shall declare the county to be incorporated under this chapter, unless just ground to impugn the legality and fairness of the proceedings shall be shewn to the satisfaction of the governor in council, in which case the proclamation may be withheld until examination into the legality of proceedings can be had, and the governor in council shall ultimately decide accordingly as the regularity and fairness of the proceedings or the reverse shall be established.

Return, how acted upon.

The sheriff shall receive forty shillings, the presiding officers ten shillings each, and the clerks five shillings each, in full for their services, to be paid by the county or district.

Fees.

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Proceedings,
when renewed.
County incor-
porated, &c.

The proceedings may be renewed at any period not less than twelve months from any rejection of incorporation.

2. The inhabitants of every county incorporated under this chapter shall be a body corporate, under the name of the municipality of ———, and shall have perpetual succession and a common seal, with power to break, renew or alter such seal at pleasure, and shall be capable of suing and being sued, of pleading and being impleaded in all courts and places whatsoever, of purchasing, acquiring and holding lands and tenements, and other real and personal property within such municipality, for the use of the inhabitants thereof in their corporate capacity, and of making and entering into such contracts as may be necessary for the exercise of their corporate functions; and the powers of the corporation shall be exercised by and through and in the name of the municipal council of such county.

Council, what
to consist of.

3. The council shall consist of a warden and councillors; the warden to serve for one year, and the councillors after the first election for two years, and until their successors shall be sworn into office.

Time of elec-
tions.

4. The first election of councillors shall be held on the third Tuesday of November, and shall be conducted by the sheriff and persons named by him; all succeeding general elections shall be held on the third Tuesday of November in each year, and shall be conducted by presiding officers named by the councils.

Districts, &c.,
number of
councillors re-
turned.

The elections shall take place in and for each of the electoral districts laid off for the election of members to serve in general assembly, and each district shall return two councillors, except when otherwise provided in the schedule A. hereto annexed, and the election shall take place in and for the several districts comprised in that schedule as therein directed, in the same manner as if the said schedule were incorporated in this chapter.

What districts
to be consider-
ed as separate
counties.

For the purposes of this chapter the districts of Saint Mary's in the county of Guysborough, and Barrington in the county of Shelburne, the township of Clare in the county of Digby, and the township of Argyle in the county of Yarmouth, shall be treated as separate counties and incorporated accordingly. And the court houses at Barrington, Sherbrooke, Tusket and Clare, shall be used as county court houses in those districts respectively for the purposes of this chapter.

Notices of elec-
tions; presid-
ing officers.

5. It shall be the duty of the sheriff in the case of the first election, and of the presiding officers in future elections, to give at least ten days public notice, in writing, of the times and places of holding the election, and post the same in three of the most public places in each district; and the sheriff and persons appointed by him shall preside at such first election, and persons appointed by the council shall preside at future elections.

It shall be the duty of the municipality clerk to supply the presiding officers with the notices after the first election.

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Notices, how supplied.

6. Soon after the first election the councillors shall be divided by the council into two sections, to be distinguished by lot number one and two, the numbers of which beginning with section number one shall go out of office in each alternate year. In forming these sections the councillors for districts returning two or more shall be apportioned between the sections.

Division of councillors.

7. On the third Tuesday in November, in the year next following that in which the first election shall be had, and on the same day in each succeeding year, an election shall be held of the councillors in one section, beginning with number one, and proceeding in all future annual elections in regular alternation; the members returned at each election shall be entered on the list of the section previously occupied by the members then vacating office; councillors going out of office may be re-elected.

Time of election of councillors composing each section.

8. Every election shall commence at nine o'clock in the morning. No candidate shall be proposed after twelve o'clock; at any time after that hour the poll may be closed by proclamation if no vote be polled within the hour, and the poll shall not be continued later than five o'clock in the afternoon. At the close of the poll the presiding officer shall proceed, publicly, to declare the number of votes given for each candidate, and shall proclaim the person having the majority of votes to be duly elected, and summon his attendance on the second Tuesday of December following, at the county court house.

Election, how conducted.

If there shall be an equal number of votes the presiding officer shall give a casting vote, and so determine the election.

Casting vote.

The presiding officer and his clerk shall then and there publicly subscribe the poll list and seal up the same, and the presiding officer, within two days after the close of the election, under the penalty of four dollars for each day's delay thereafter, shall make return in writing of the councillors elected, together with the poll list, the seals having been unbroken, at the first election to the sheriff, and at subsequent elections to the municipality clerk; and such poll list, after having been published as hereafter provided, shall be open to the inspection of every member of the incorporation.

Poll list to be signed and sealed; returns.

9. The proclamation and summons of the presiding officer shall be notice to every councillor elect, present in person or by an authorized agent or clerk; councillors elect, not so present, shall be, immediately after the election, notified and summoned by the presiding officer.

Notice to councillors.

10. Before the presiding officer shall allow any votes to be polled, he, and the clerk he may employ, shall take the

Presiding officers and clerk to be sworn.

CHAP. 133. oath in the schedule annexed before a justice of the peace or two electors, and they shall certify such oath in the poll book for the election.

Must vote in his own district.

11. No person shall vote except in the district in which he resides.

Electors, qualification for.

12. Municipal electors shall have the same qualification, and be liable to the same objections, questions and oaths, as electors for members of assembly shall at the time by law be required to have, and be subject to; and the objections shall be taken and questions and oaths put and administered as the law regulating elections of members of assembly shall require.

Councillor, qualification for.

13. No person shall be qualified to be elected or serve as councillor who shall not at the time of the election be possessed of the same qualifications as are required in the case of members of the house of assembly.

Persons disqualified.

14. None of the following persons shall be elected a councillor, or be appointed to office by any council; nor shall any person continue to act as councillor or hold any office under a municipal council after becoming one of the persons disqualified as follows:

I. Persons in holy orders, or ministers, or teachers of any religious sect or denomination; but this restriction shall not extend to school commissioners.

II. The sheriff.

III. Any person having a contract, or share or interest in a contract with the municipality.

IV. Any person receiving a pecuniary allowance from the municipality for his services in any office other than warden or councillor.

Persons exempted.

15. The following persons shall be exempt from being elected councillor or serving in any municipal office unless with their own consent.

I. Justices of superior courts and of probate.

II. Members of the executive or legislative councils, members of the legislative assembly, schoolmasters actually engaged in teaching, any miller who shall be the only one employed in a mill; persons more than sixty years of age.

III. Persons who have served as councillors or in any municipality office, or paid the penalty for refusing, shall be exempt during the four years next after such service or refusal.

Warden, qualification of.

16. At each annual election, including the first, the electors may vote for a warden from among the body of inhabitants resident within the municipality, and qualified as is required for a councillor; and the sheriff, at the first elections, and at subsequent elections the presiding officers, shall return under seal, the votes given for warden in each district, when they make return of the councillors elected.

17. On the first meeting of the council following each annual election, the council shall ascertain the votes given for warden in all the districts, and any one person having a majority of the whole number of votes given for warden shall be warden for that year, and he shall take the oaths of office; and also if he shall not be a councillor already sworn in, the oath of qualification, and shall have all the authority of a councillor while warden, and be liable to a like fine for non-acceptance of office, or not qualifying.

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Return of votes for warden.

How elected.

18. In case no person shall have a majority of the whole votes given for warden, or being so elected shall not qualify and serve, the council shall choose by a majority of votes from among themselves or from among the inhabitants, at their discretion, a warden duly qualified.

In case no majority, or warden not qualified.

19. The warden shall hold office for one year, and thereafter until his successor be appointed, but he may be re-elected. Whenever a vacancy occurs during the term of office, by death, resignation or otherwise, the council shall, at its first meeting thereafter, proceed to elect a warden for the remainder of the term; during the temporary absence of the warden, his place may be filled by a chairman for the time being, with all the authority of the warden chosen by the members present.

Duration of office.

When vacancy occurs.

20. The presiding officer, at an election of councillors, during the time of such election, shall be a conservator of the peace, and shall be invested with the same powers for the preservation of the peace, the apprehension, committal, holding to bail for trial, or trying or convicting offenders, as are vested in justices of the peace in this province; and for the purpose of preserving peace and good order, all justices of the peace residing in the district shall attend at the election, upon being notified in writing by the presiding officer; and such officer may command the assistance of all justices, constables and other persons present at the election, and may swear in as many special constables as he thinks fit; he may commit any person for a breach of the peace, or for molesting or threatening any elector, at or coming to, or returning from, the election, or for any violation of good order, to the custody of any constable or person present, on view, for such time as he deems expedient; or may, by writing under his hand, commit the offender to the common jail of the county for any period not exceeding ten days; and any justice of the peace or other person present at the election who shall neglect to aid or assist the presiding officer during such election, when requested by him, shall be deemed guilty of a misdemeanor, and be punished accordingly.

Presiding officer at elections power of.

21. No person who may be elected a councillor shall act in that capacity until he shall have taken and subscribed, before a justice of the peace for the county, or the sheriff, in the case of the first election, and in case of subsequent

Councillors must take oath of allegiance.

CHAP. 133. elections, before the warden or municipality clerk, the oath of allegiance to her majesty, and also the oath of office and qualification. Such oath shall be taken and subscribed by each councillor, duly qualified, at the first meeting of the council after his election, or otherwise within ten days after notice of his election; and, in default thereof, such person shall be deemed to have refused to accept the office of councillor, and shall be liable to pay the municipality clerk such fine, not exceeding forty dollars, nor less than twenty dollars, as the bye-laws of the council shall prescribe—provided that no person elected a councillor shall be subject to a penalty for not taking the required oaths if he be not qualified, which fact he shall be required to verify on his own oath, before a justice of the peace on first election, and before the warden or municipality clerk on subsequent elections.

Exemption
from penalty.

Election of
councillor in
case of vacancy.

22. In case of the death or resignation of any councillor, or his permanent absence from the municipality, or absence for more than six months, or incapacity after election, or refusal to accept office, or neglect to be sworn, the warden of the county shall issue a warrant, under his hand and seal, to the presiding officer, requiring him to call a public meeting in the district to elect some other person to fill the vacancy, and such election shall be conducted in the manner prescribed in this chapter for holding elections; but no warrant shall issue for an election to supply a vacancy within three months of the annual election.

Organization of
council.

23. On the second Tuesday of December, after the first election, the sheriff and the councillors elect shall meet at the county court house, and the sheriff having produced the returns of the presiding officers, and the seals being then and there broken, and the returns examined, and the councillors elect having been sworn into office, the council shall be organized and proceed to business.

Time of meet-
ing after first
year.

24. On the second Tuesday of December, after the annual elections in all subsequent years, the municipal council and the councillors elect shall meet at the county court house, and the municipality clerk having produced the returns of the presiding officers, and the seals being then and there broken and the returns examined, the councillors elect shall be sworn into office.

Quorum.

25. A majority of the council shall be a quorum for the transaction of business. A smaller number may adjourn from time to time, and absent members may be compelled to attend under such penalties as may be provided by bye-law of the council. All questions arising in the council shall be decided by a majority of votes; and the warden or temporary chairman shall have a right to vote.

Members may
be compelled
to attend.

Questions, how
decided.

Number of
meetings in
each year.

26. There shall be two established meetings of the council in each year; the first, herein designated the annual meeting, shall be held at the county court house on

the second Tuesday of December; the second, herein CHAP. 133. designated the half yearly meeting, shall be held at such place as the council may appoint, on the last Tuesday of April.

27. Besides these regular meetings, the council may meet as often as expedient for the despatch of business, at such time and place as they may appoint. Public notice shall be given of the time and place of each meeting of the council, and all meetings shall be open and public. The council shall have power to adjourn, and to appoint committees to act during the session and recess. If any council fails to meet at any time appointed by law, they shall not thereby be deemed to be dissolved, but may hold future meetings as if there had been no failure. Extra meetings — notice of.

28. Each council shall appoint a clerk and a treasurer, who shall respectively perform the duties now exercised by the clerk of the peace and county treasurer, as far as the same come within the scope of the corporation and of this chapter, and the council shall prescribe the duties of such officers, and the security to be given for the faithful performance thereof. Clerk and treasurer, appointment of.

29. The general duty of the clerk shall be to record in a book all the proceedings of the corporation, make regular entries of all resolutions and decisions, and if required by any member present, to enter the votes as given, and to preserve and file all accounts, and to keep the books, records, and accounts of the corporation, which shall be open, without fee or reward, to the inspection of all persons at all seasonable times and hours. Duty of clerk.

30. The treasurer shall be appointed annually. It shall be the duty of the treasurer to receive and safely keep all monies belonging to the municipality, or which he shall be appointed to receive, and keep and pay out the same to such persons and in such manner as he shall be directed to do by any lawful order of the municipal corporation, or by any law of the province, and strictly to conform to and obey any such law or any bye-law lawfully made by any such municipal corporation, and faithfully to perform all such duties as may be assigned to him by any such law or bye-law; and every treasurer shall annually give such security for the faithful performance of the duties of his office, and more especially for the due accounting for, and paying over, all monies which shall come into his hands by virtue of his office, as the municipal corporation by which he was appointed shall direct. Duty of treasurer.

31. The council shall make such bye-laws or resolutions as to the duration of the office of the clerk, as to them shall seem fit. Council to make bye-laws, &c. as to duration of clerk's office.

32. The council shall make such bye-laws or resolutions as to the number of offices to be held by one person, as to the holding of offices by partners of municipality officers, Same as to number of officers, &c.

CHAP. 133. and as to officers having an interest in any work undertaken for the municipality, as to them shall seem fit.

Resignation
and fine.

33. A warden or councillor may resign his office at any time by a declaration to that effect under his hand, and on payment of a fine of forty dollars.

Duration of office of warden, &c.; elected to fill vacancy.

The warden or councillor elected to fill an occasional vacancy, shall hold office for the residue of the term of the person whom he succeeds, but no longer; but he shall be capable of re-election if qualified.

Formation of
bye-laws.

34. The council shall have power to make, and from time to time alter, such rules and regulations as may be requisite for the conduct and good order of their proceedings, and such bye-laws touching any matters within its authority as it may judge proper.

Auditors, appointment of, qualification, &c.

35. The council at its first meeting in each year, or as soon after as practicable, shall appoint two persons to be county auditors. No person shall be appointed auditor who is a member of the municipality council or one of the officers, or who was a councillor or officer at any time within a year previously, or who shall, directly or indirectly, by himself or partner, have any share or interest in any contract with the municipality council, or any employment under them. No municipality auditor shall act as such unless he shall have the qualification required for a councillor, and shall have previously made and subscribed the oath of office and qualification.

Auditors, duty of.

36. It shall be the duty of the municipality auditors to examine and audit the accounts of the treasurer, and all other accounts of the council or corporation, or in which the municipality is concerned; and it shall be the duty of the council to refer to them all such accounts, and their duty faithfully to report thereon without needless delay.

Authority of
auditors.

37. The municipality auditors shall have authority to call for all books and vouchers they may deem necessary for elucidating any account laid before them. No account shall be allowed or passed by the council until the same is audited and reported upon by the municipality auditors; and all audited accounts shall be open at all reasonable times to the inspection of any elector of the municipality.

Salaries of warden and councillors.

38. The warden and councillors shall be paid, that is to say: the warden by a salary to be established by the council, and the councillors according to their actual attendance, at such rate as the council by bye-laws shall determine, not to exceed one dollar per day, and travel at the rate of five cents going and returning per mile.

Attendance.

39. The clerk shall keep an exact account of the attendance of councillors at every meeting.

Fines for non-attendance.

40. The warden and councillors shall respectively be liable to such fines for non-attendance or other neglects, as the council by bye-laws may appoint, of which the clerk shall keep a correct account; nor shall any of them be

authorized to receive any payment for salary or fees until such fines as may stand against them be deducted. CHAP. 133.

41. On the first meeting of the council, after each annual election, or as soon after as may be convenient, the council shall vote for each poor district the sum it shall judge necessary for the support of the poor in that district, and the purposes enumerated in the eighty-ninth chapter, and shall appoint overseers of the poor for the existing poor districts, until such existing poor districts shall be altered by the council, which districts it has power from time to time to alter, if it shall see fit to do so.

Vote for the poor, overseers &c.

42. The overseers of the poor shall account to the council instead of the sessions; and the council shall exercise the functions given by such eighty-ninth chapter to the grand jury, town meetings and general and special sessions, and to the sessions by the ninetieth chapter, and shall hear and determine appeals, and in all particulars shall carry out the objects of those chapters as nearly in conformity with the mode thereby directed as shall be consistent with this chapter and the incorporation thereunder.

Council to exercise the functions of the grand jury, sessions, and as given by chapters 89 and 90.

43. In the exercise of the functions, and the carrying out of the objects stated in the preceding section, and also in any other matters exclusively relating to townships or special districts, and which have heretofore been managed by township or district officers, and under township and district authority, the municipality may appoint, for carrying into effect and managing the same, committees of their own body, comprising councillors returned from such townships or districts, which committees may meet from time to time, and shall specially attend to and regulate the affairs of those townships or districts under the supervision, direction and control of the council, and subject to its orders and revision, and liable to be superseded at its pleasure.

Committees, formation of.

44. The municipalities may vote, assess, collect, receive, appropriate, and pay, whatever monies are required for purposes named in the forty-fifth chapter, and shall have all the powers and authority which, when this chapter shall go into operation, may be possessed by the grand jury and sessions under that chapter, and shall carry out the objects of that chapter as nearly in conformity with the mode it directs as shall be consistent with this chapter and the incorporation thereunder.

Power of municipalities.

45. The municipalities, for raising the monies required under such eighty-ninth and forty-fifth chapters, and which may be required for any other township, district, or county purposes, shall at the annual meeting in December, appoint a suitable number of assessors and collectors, and prescribe their duties and allot their limits within which to act. Casual vacancies shall be filled by the council, if such vacancies occur within a month before either regular

Appointment of assessors.

Casual vacancies, how filled.

CHAP. 133. meeting of the council, otherwise by the councillors for the electoral district or districts within which the assessors or collectors were limited to act.

Duration of office of treasurer, assessors, &c.

46. The treasurer, overseers of the poor, assessors, collectors, and other officers whose term of office is not by this chapter, or shall not be by bye-law of the corporation otherwise determined, shall hold office from the time of their appointment, or from the time by the council fixed for its commencement, until the first annual meeting in December next, after or until their successors be appointed.

Financial year when ended.

47. The municipal financial year shall end on the thirtieth day of November, and all accounts of the several officers, and of the municipality, shall be audited, examined, determined upon, and passed, as far as possible, at the first annual meeting in December.

Road monies, distribution of.

48. At the half yearly meeting in April, the road monies granted by the legislature shall be apportioned to the extent and upon the principles which the legislature may from time to time direct and approve; commissioners for its expenditure shall be appointed, and any other appointments and business attended to.

Appropriation lists to be sent to financial secretary.

49. At the same meeting the council shall transmit to the financial secretary a full and exact list of the appropriation of the road monies granted by the legislature, with the commissioners names.

Commissioners —duties of.

50. The commissioners shall lay out the money and make account of the expenditure, as the law now does, or hereafter may require; but their accounts instead of being attested before a justice of the peace, shall be audited and sworn to before a councillor resident in the district where the work may be performed, or if none shall be resident therein, a councillor resident in an adjacent district; and such councillor shall certify the account as approved under his hand. The commissioners shall draw for the money, and their accounts be audited and paid at the financial secretary and receiver general's office, as is now done.

Account of commissioners.

51. The commissioners shall immediately return a duplicate of their account to the municipality clerk, and the council shall, at the annual meeting in December, examine these accounts, and return a full abstract to the financial secretary.

Account, further examination of.

52. If any occasion shall induce the council to judge a further examination of any account to be necessary, they shall refer the same to the municipality auditors, to whom the commissioners shall make explanations; and the auditors shall report thereon to the council before the half-yearly meeting in April.

School commissioners, appointment of.

53. The council shall appoint a board or boards of school commissioners in place of the boards which may be acting at the time this chapter shall go into operation; the members severally to hold office during the pleasure of

the council. The board of school commissioners shall CHAP. 133.
 appoint their own clerk, and in addition to the returns
 required by law, shall make a full account of their appro-
 priations, expenditures and proceedings to the munici-
 pality clerk at such times as the council may order. The
 municipality clerk shall immediately place the returns in
 the hands of the auditors, who shall examine and report
 thereon to the council at its next general meeting, and the
 council shall examine and adjudicate on the same.

54. The municipalities shall have authority for the
 purchase, acquirement and management of all such real Municipality
property, court
house, &c.
 and personal property within the municipality as may be
 required for purposes of the corporation, and the sale and
 disposal of the same, when no longer required; and for
 the superintendence and management of all the property
 of the municipality, and for the erection, preservation and
 repair of the municipality court house, jail, lock-up house,
 town hall, and all other buildings required by or being
 upon any land belonging to the municipality as a corpora-
 tion; and shall have and possess all powers given to the
 sessions by the forty-seventh chapter; and the protection,
 care and management of municipality property, and the
 title, powers and authority of the grand jury, sessions and
 trustees, under the ninety-seventh chapter.

55. The municipal councils shall appoint a sufficient Pound keepers,
fence viewers,
&c., appoint-
ment of, duties,
fees, penalties,
&c.
 number of pound keepers, fence viewers, overseers of the
 highways, road surveyors, and of such and so many
 officers as may be necessary for carrying into effect any of
 the provisions of this chapter, or of any other act of the
 legislature, concerning any of the subjects placed under
 the jurisdiction of the councils, or of any bye-law of the
 municipality; and in like manner to displace any of them
 and appoint others in their room, and to add to or diminish
 the number of them as often as the corporation shall see
 fit, and to regulate their powers and limits wherein they
 shall be exercised; and shall regulate and prescribe the
 duties of all officers acting under the authority of the
 corporation, and the penalties of their making default in
 the performance of such duties, and shall settle the remu-
 neration of all such officers, in all cases where the same is
 not settled by act of the legislature, and the providing for
 the payment of the remuneration which, by the act of the
 legislature, or by the bye-laws of the municipality, may
 be provided for such officers; and shall regulate the bonds,
 recognizances or other securities to be given by such
 officers for the faithful discharge of their duties; the
 penalties for refusing to serve in any office, and for the
 infringement of any bye-law of the municipality.

56. The municipal corporation shall have the appoint- Board of health,
appointment of.
 ment of health officers, health wardens, and health inspec-
 tors, and a board of health, with the authority and powers

CHAP. 133. given to justices in general or special sessions by the fifty-third and fifty-fifth chapters.

Rabid animals.

57. The municipal corporation shall also make regulations for the protection against rabid animals, and the destruction of noxious animals, and for exercising the authority and powers given to justices in general and special sessions by the fifty-fourth and ninety-third chapters; also for the preservation of useful birds and animals, and the regulation and protection of the river fisheries, and for exercising the powers and authority of general and special sessions under the ninety-second and ninety-fifth chapters.

Preservation of game and fisheries.

Setting fire to woods, removing obstructions from rivers, &c.

58. Also for preventing damage by setting fire to woods, felled trees, underbrush, and on bog and marsh lands; also, for removing obstructions from rivers, and for regulating the bringing down of logs, timber and lumber on rivers, and for exercising the powers of the grand jury and sessions under the one hundred and third chapter.

Fires, regulations concerning firemen, &c. appointment of.

59. The council shall make orders for the prevention and suppression of fires, regulating stoves, stove pipes, flues, furnaces, ovens, and the safe keeping of ashes, and shall appoint firewards, firemen, fire constables, and engine men, and shall exercise the authority and powers of the general and special sessions under the ninety-ninth chapter, and shall make orders for the prevention of the unnecessary and wanton discharge of fire arms and fire works.

Council to have same power as is given to sessions under certain acts.

60. Also, the municipal council shall have the power given to general or special sessions under, and shall make orders for carrying into effect, the one hundred and fourth, the one hundred and fifth, the one hundred and sixth, the one hundred and seventh, the one hundred and eighth, and the one hundred and ninth chapters; and so much of the one hundred and forty-seventh chapter as relates to preventing trespasses by horses and oxen and other animals going at large.

Acts of clerk of the licenses, how performed.

61. The acts required in the one hundred and fourth chapter to be performed by the clerk of the licenses and by justices of the peace, shall be done by the clerk of the corporation and two councillors, unless otherwise ordered by any bye-law or order of the council.

Acts of town clerk; how performed.

62. The acts required in the one hundred and fifth chapter to be performed by the town clerk, shall be done by any officer or person authorized by the council, and a municipal councillor shall exercise concurrent authority with a justice of the peace under that chapter.

Chapters 159, 160 and 162 not affected.

63. This chapter shall not interfere with nor affect the jurisdiction created under the one hundred and fifty-ninth, one hundred and sixtieth, and one hundred and sixty-second chapters.

64. The warden while in office shall ex-officio be a justice of the peace in and for the county, and shall have within the municipality all the powers and jurisdiction, as well civil as criminal, which belong to that office, and as well the warden as in his absence any councillor shall have power to administer oaths and affirmations concerning accounts, and other matters which shall be submitted to the corporation, or shall concern the same.

CHAP. 133.

Warden to have same power as justice of the peace.

65. The grand jury and sessions, or the justices in session, either general or special, shall not be required to meet for any purpose for which, by law, they are now required to meet in any municipality; but nothing in this chapter shall be construed to take from justices of the peace their power as conservators of the peace, or to impair or abridge the criminal jurisdiction they possess by common or statute law, or their authority over offences partaking of a criminal nature given by any law of this province, nor the power to administer oaths, nor any power belonging to the office of justice of the peace, which is not taken away by this chapter, either expressly or by necessary implication.

Grand jury and sessions not required to meet.

Power of justice of the peace not affected.

66. The powers and authority of the council shall also extend to the following objects:

Power and authority of council.

I. The laying out of new roads, and the making, maintaining, or improving of any new or existing road or street, or for stopping up, altering, or diverting the same, not being a great road, subject however to the provisions of the law, and the restrictions and protection to private rights contained in the sixtieth chapter, and subject to the rights of the crown and the province in public property.

Roads.

II. The appropriating and apportioning road money granted by the legislature, to be laid out in the municipality by the municipal authority, and appointing commissioners for its expenditure, and the accounting therefor to the government.

Road money.

III. The directing and enforcing the performance of statute or highway labor, and the expenditure of the commutation money for highway labor and all the powers of the sessions and of the justices of the peace under the sixty-second chapter, and the returns therein directed shall be made to the council or their clerk, or as the council may order.

Statute labor.

IV. The division of the municipality into road districts, and the appointment of a superintendent of roads in each with such powers as regards the roads and bridges, and the expenditure of provincial and municipality money, and statute labor therein, as the council shall see fit to confer; and the erection, preservation, and repair of any new or existing bridges; the protection of timber, stone, sand or gravel, or any appropriation for roads or other public property, and the sale of such timber and other articles.

Road districts, bridges, &c.

- CHAP. 133. V. The support of the poor by municipality, township, or district organization, and the erection and maintenance of municipality, township, or district poor houses.
- Poor.
- Intoxicating liquors. VI. The making orders for carrying into effect the law, as it may from time to time exist, concerning the manufacture, importation, and sale of intoxicating liquor, and the providing payment for expenses that may be incurred in relation to that object.
- Ferries, wharves, &c. VII. The regulating ferries, public wharves and landings, and the establishment and regulations of markets and fairs.
- Assessment. VIII. The providing means for defraying such expenses connected with the administration of justice as require to be defrayed out of the municipality funds; the providing for the establishment and support of schools and hospitals; and the erection of school houses and hospitals, the raising, assessing, levying, and appropriating all monies that may be requisite for carrying into effect the objects for which the council is empowered to act or to make bye-laws; such monies to be raised by rates to be assessed on real and personal property, or its owners or occupiers.
- Collection of assessments. IX. The collection and accounting for, of all tolls, rates, and assessments of the municipality revenues; but no monies shall be voted, nor any salaries determined upon, except at one of the two regular meetings, or an adjournment thereof, unless the public service may require a deviation from this rule; in such cases, as also in cases of adjourned meetings, every member of the council shall have notice of the meeting and its objects.
- Proviso.
- Contracts. X. The making of all contracts relative to matters under their control, which contracts, after having been duly considered by the council, shall be signed by the warden, and countersigned by the county clerk.
- Salaries of officers. XI. The determining what officers it may be expedient to pay, fixing the amount of the salaries, fees, and remuneration, where not fixed by this chapter, and the time and mode of paying them.
- Returns of assessors; expenses of elections. XII. The returns of assessors and collectors, with a view to the general business of the municipality. The expense of municipal elections and the mode of remuneration.
- Presiding officers at elections. XIII. The appointing of presiding officers for conducting municipal elections, the times, places, and mode of election, and the times, form and manner of the presiding officers' returns, as far as may not be specially directed by this chapter.
- Contested elections. XIV. The making of rules and regulations for the trying contested elections of members of their own body, and the trying of such contested elections.
- Prevention of vice. XV. The enforcing of the due observance of the Lord's day; the prevention of vice, drunkenness, profane swear-

ing, obscene language, and any other species of immorality or indecency in the public streets and roads, and for preserving peace and good order in such streets and roads, and in public places or taverns; for preventing the excessive beating or cruel and inhuman treatment of animals; for preventing the sale of any intoxicating liquors to indians, children, apprentices or servants; for restraining and punishing all vagabonds, drunkards, and beggars, and all persons found drunk or disorderly in any street, road or public highway in the county. CHAP. 133.

XVI. The providing for any other purpose, matter or thing specially subjected to the control of the council by law; but no bye-law shall impose any punishment or imprisonment, or any penalty exceeding twenty dollars. Other matter under control of council.

67. The council, as often as requisite, shall appoint coroners, and determine their limits within which to act. Coroners, appointment of.

68. It shall be discretionary with the municipality council to procure a snow plough, or other machine or contrivance sufficient to keep the roads open and beaten after the fall of snow, to the width of at least eight feet, and place the same under the charge of the commissioners of highways in such district, who shall cause the same to be worked and used by such number of the inhabitants of their district as they shall judge sufficient for its use, and in rotation; and the cost of the snow plough shall be defrayed out of the county funds by a rate imposed equally on the whole district. Snow plough.

69. All powers and authorities now vested by law in the grand jury and sessions, in special sessions, or in justices of the peace, to make bye-laws, impose rates or assessments, appoint township or county officers, or make regulations for any county purpose whatever, after the incorporation of any municipality shall be transferred to, vested in, and be exercised by, the municipality council only; but no bye-law or regulations made by the justices in session shall be considered repealed until the municipality council shall expressly declare such repeal by a bye-law; and the county and town officers shall continue to exercise their functions until the first meeting of the incorporated council under this chapter, and they shall be liable to account to the council. All powers vested in grand jury, sessions, &c. to be transferred to municipality council.

70. All debts, liabilities and obligations of every kind which may be due or owing, or to which any municipality may be liable at the time of its incorporation, shall be assumed, paid and performed by the municipality council, and be recoverable from the same by action, or otherwise, on the same terms and conditions as the same should have been paid and performed if the county had not been incorporated; and all property of a public nature, and debts of every kind, belonging or owing to any municipality, shall, at the same time, become vested in and due Proviso.
Debts to be assumed.

CHAP. 133. and payable to the municipality council; but no municipality council shall issue, or authorize the issuing, of any bill or note, or in any way act, or authorize any persons to act as bankers.

Provide.

Assessment of poor and county rates.

71. In assessing any rate or tax the municipality council shall be governed in all things by the laws now or hereafter to be enacted for the levying and collecting of poor and county rates, except as herein provided; and the same shall be apportioned and assessed equally on all property liable by law to poor and county rates; but no rate or assessment whatever shall be made or levied on any lands, tenements or other property, real or personal, of her majesty, her heirs or successors, or in possession of the board of ordnance.

Allowance to collector, &c.

72. All allowances or per centage granted by law to any collector or county treasurer, and all salaries, wages and allowances of any kind enjoyed by any county, town or parish officer, shall continue to be paid, after the incorporation of any county, until otherwise ordered by the municipality council.

Bye-laws must be laid before the legislature.

73. An authentic copy of each bye-law passed by the municipality council, shall forthwith, after being passed, be transmitted by the warden or chairman for the time being to the provincial secretary, who shall note on such bye-law the date of its receipt, and lay the same before the governor, by whom the same shall be laid before the legislature within ten days after the opening of its next session. Any bye-law repugnant to the law of the land, or the provisions of this chapter, shall be wholly void and of no effect whatever.

Expenditure to be laid before the legislature.

74. At least ten days before the meeting of the provincial legislature, the wardens shall transmit an abstract of the receipts and expenditures of the municipality, and the returns from the several judicial district courts during the preceding year, to the governor, who shall lay the same before both branches of the legislature.

Not to extend to toll bridges, &c.

75. Nothing in this chapter shall extend to any toll bridge, or road belonging to any company or individuals, nor to any work under the control of the imperial or provincial governments, or of the military authorities.

Penalties how recovered.

76. All fines and penalties imposed by any bye-laws of the municipality councils, and for the recovery of which no other provision is made, may be recovered with costs, by suit and execution, as in the case of debts, in the name of the corporation, before any justice of the peace for the county, and, after the appointment of judicial district courts, before such courts. All fines and penalties, when recovered, shall be paid and applied as the bye-law shall direct. No informer or other person, who is to receive for his own benefit any part of a fine or penalty, shall be competent witness for the prosecution, unless he first relin.

Informer not a competent witness, when.

quishes, in writing, all claim to his proportion of the fine or penalty ; in such case the whole penalty shall be applied as the bye-law shall direct for that portion which was to go to the informer or prosecutor. No inhabitant of the municipality, or member or officer of the council, shall be an incompetent witness in any prosecution for the recovery of a fine or penalty, or in any suit for money payable to the clerk or treasurer, or due to the council, or in any suit wherein the council is a party, or has an interest in the result, by reason of such person being an inhabitant of the municipality, or a member of the council, or an officer or a person in its employ ; provided that such person shall have no other interest in the prosecution or suit which would render him an incompetent witness.

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Members of council competent witnesses.

77. The municipality council shall strictly account to the governor for the expenditure of all provincial monies granted for roads or other municipality uses, and under all needful vouchers. These expenditures shall be examined and audited by the financial secretary, and the accounts laid before the legislature within ten days after the opening of each session.

Expenditure of road monies to be accounted for.

78. In the case of the first election, the sheriff shall receive from the municipality funds the sum of eight dollars, in full for his services, and each presiding officer shall receive two dollars, and each poll clerk one dollar, in full for their respective services.

Sheriff's, &c. fees on first election.

79. All rates and tolls imposed by the council shall be assessed and recovered in manner prescribed by the bye-laws, and by such assessors and collectors as may be appointed for that purpose by the council at one of the two meetings hereby appointed : provided such bye-law is not repugnant to the law of this province or to this chapter.

Assessments, how recovered.

80. All rates for public purposes, not within the scope and authority of this chapter, which the inhabitants of any county are now liable, or may hereafter be liable, to pay by a law of the province, shall continue to be assessed upon and paid by the inhabitants of any incorporated county, until otherwise directed by act of the legislature.

Rates for public purposes.

81. Nothing in this chapter contained shall be construed to repeal or affect the provisions of any law or enactment now in force, except so far only as such law or enactment shall be inconsistent with, or repugnant to, the provisions of this chapter, or the attainment of the objects and purposes thereof.

Inconsistent or repugnant laws only affected.

82. Every returning officer, or person holding any election under this chapter, shall have power to administer all oaths and affirmations required to be administered or taken at any such election.

Returning officer may administer oaths.

83. Every officer who shall be elected or appointed under this chapter, shall, before entering on the duties of his office, take and subscribe the general oath of office

Every officer to be sworn.

CHAP. 133. contained in the schedule, unless officers for whom the schedule contains a special oath of office.

Oath of qualification, by whom taken.

84. Every person elected or appointed under this chapter to any office which requires a qualification of property in the incumbent, shall, before he shall enter upon the duties of his office, take and subscribe the general oath of qualification contained in the schedule of oaths, and shall annex thereto and file with the clerk a schedule of his qualification.

No person qualified to vote &c., unless a subject of her majesty.

85. No person shall be qualified to vote or to be elected or appointed to any office under this chapter, who shall not, at the time of his voting, election, or appointment, be a natural born or naturalized subject of her majesty, her heirs, or successors, and of the full age of twenty-one years.

Oaths by whom to be administered.

86. When no provision shall be made in this chapter for the administering of any oaths or affirmations required to be administered or taken, the same may be administered by the warden, or, in his absence by the clerk, or by any councillor or any justice of the peace of the county; and when an oath or affirmation is directed to be administered by, or taken before, any officer or person, the authority to administer is included.

Penalty for refusing to take office.

87. Every qualified person duly elected or appointed to any office in, by, or under the municipality, in cases not herein expressly provided for, who shall refuse such office, or neglect to take the several oaths or affirmations required by this chapter in respect thereof, within ten days after his election and appointment, having had notice of such election or appointment; and every person who shall enter on the duties of any office under this chapter, without having taken the oath required in respect of such office; and every person duly authorized to administer such oaths or affirmations, who shall refuse to administer the same when such administration is reasonably demanded of him, shall thereupon, respectively, forfeit such sum, not more than eighty dollars, nor less than eight dollars, as may be prescribed by the bye-laws of the municipal corporation, to be paid to the clerk of such corporation for the use thereof: provided that such forfeiture shall not be incurred by any person not legally qualified, or who shall be legally exempt, and who shall verify that fact on his oath.

Provide.

Affirmation.

88. Every person authorized by law to make affirmation instead of taking an oath may make affirmation in every case where an oath is required by this chapter; and any person who shall wilfully swear or affirm falsely in any matter where an oath or affirmation is required by this chapter, shall be deemed guilty of wilful and corrupt perjury, and be punished accordingly.

Corporations of cities not affected.

89. Nothing in this chapter contained shall abridge, limit or defeat any rights, powers, privileges or jurisdiction.

tion of the corporation of the city of Halifax, or the corporation of any other town which may be incorporated during any further sitting of the legislature. CHAP. 133.

90. Every action brought by or against any municipality council shall be brought by or against the same by its corporate name; and in all such actions, service of process on the warden or clerk for the time being shall be good and valid service of such process. In case of judgment being given against the corporation, the same shall be paid by order of the council, without unnecessary delay, if there shall be funds available for the purpose, otherwise the amount shall be included in the next assessment, and shall be paid out of the first monies which shall be subject to the appropriation of the council; if the amount shall not be paid within six months after judgment recovered, and demand made, the supreme court, or a judge thereof in vacation, shall have the power to amerce the county, which, by the sixth and fifty-fourth sections of the forty-fifth chapter, are given to the sessions and the supreme court, and may, if need be, appoint assessors and collectors.

Actions against council, how brought.

91. Judgments against a municipal corporation shall bear interest at six per centum per annum.

Judgments, interest on.

92. Coroners appointed under this chapter shall be sworn into office before the warden, or in his absence two councillors; and the forty-first chapter, except the first section, shall be in force as to such coroners. Nothing in this chapter contained shall affect coroners now appointed.

Coroners to be sworn.

93. The jurisdiction of the general and special sessions of the peace and of the grand jury, in all matters over which, by this chapter, jurisdiction is given to the municipal council, is taken away in counties in which this chapter shall go into operation.

Present coroners not affected.

Jurisdiction of sessions and grand jury taken away.

94. The powers and authorities which in chapters nineteen, forty-five, forty-six, forty-seven, fifty-three, fifty-four, fifty-five, fifty-nine, sixty, sixty-two, sixty-five, sixty-six, sixty-seven, sixty-eight, sixty-nine, seventy, seventy-one, seventy-two, eighty-nine, ninety, ninety-two, ninety-three, ninety-five, ninety-seven, ninety-eight, ninety-nine, one hundred, one hundred and two, one hundred and three, one hundred and four, one hundred and five, one hundred and six, one hundred and seven, one hundred and eight, one hundred and nine, one hundred and forty-seven, one hundred and fifty-seven, are given to grand juries, justices in session, general or special, or to justices of the peace, and to the officers and persons named in those by them, and to officers and persons named in those chapters, for carrying out any of the provisions of those chapters, are given to municipal councils, and to the officers and persons to be appointed by them under the respective bye-laws of such councils.

Powers of grand juries, &c. given to municipal councils.

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Protection of
wardens, &c.

95. The warden, councillors, and officers acting under them, shall be entitled to the protection afforded to justices of the peace and constables, under the one hundred and fiftieth and one hundred and fifty-first chapters.

JUDICIAL DISTRICT COURTS.

Judicial districts, formation of.

Commissioners

Office of commissioners, duration of.

No councillor to be a commissioner.

Authority of commissioners

Jurisdiction.

One party must reside in district.

Meeting of commissioners—quorum, &c.

Power to administer oaths.

Appeal.

96. The municipal corporation for each municipality shall, at its first meeting, or soon thereafter, divide the municipality into convenient judicial districts, which shall, if practicable, be so formed as not to divide any electoral district or any existing township, and shall appoint three judicial district commissioners for each of such judicial districts. The commissioners shall be qualified as is required for councillors, and before entering upon the duties of their office shall take and subscribe the oaths of allegiance, of office, and of qualification.

97. The judicial district commissioners shall retain office for three years and no longer. At the end of that period the municipality corporation shall appoint a new board, but may re-elect two of the out-going officers. The corporation shall also supply occasional vacancies, arising from death, resignation, or otherwise.

98. No commissioner shall at any time be chosen from among the councillors.

99. The commissioners shall have authority within their respective districts only. Their writs may extend over the whole municipality, but shall be returnable only within the district, and shall be directed and served as writs from justices are now served.

100. They shall have and exercise within their district the same jurisdiction over actions of contract, and for petty trespasses and assaults under the one hundredth and forty-seventh chapter, and for penalties for violation of the laws relating to the importation, manufacture, or sale of intoxicating liquors, and other penalties, and the same functions for the purposes of trial which justices of the peace may possess at the time the commissioners are appointed. No action shall be sustained unless at the time the writ issued either the plaintiff or defendant shall actually reside, or the cause of action shall have arisen within the judicial district.

101. The commissioners shall meet at some convenient place to be named by the council, on the first Tuesday of every month, and may continue in session for two days, and no longer; causes not disposed of shall stand over; two commissioners shall form a quorum.

102. The commissioners shall have the same power to swear witnesses, and to try by jury, and the same authority as a court, that justices now have; and appeal shall lie from their judgment, and in the same mode as it now lies from the judgment of justices.

103. The municipal corporation shall appoint a clerk CHAP. 133.
for each judicial district, who shall take the oath of office Clerk of dis-
trict, appoint-
ment of.
before entering on his duties, and by whom, and not by
the commissioners, the writs of mesne process and exe-
cution shall be issued; but the commissioners as well as
the clerk may issue subpoenas for attendance of witnesses,
which shall extend over the province.

104. Witnesses in cases before the court of judicial Witnesses.
commissioners shall be entitled to the same fees for attend-
ance, and subject to the same obligations to attend and
give evidence, and liable to the same penalties for prevari-
cation and for perjury, as in causes at present within the
jurisdiction of justices of the peace.

105. After the court of judicial commissioners shall Power of justi-
ces to cease,
when.
come into operation, the power of justices of the peace,
to the extent of the jurisdiction of the judicial commis-
sioners, shall cease.

106. The same fees which in chapter one hundred and Fees.
fifty-five, under the head "magistrates courts," are distin-
guished as justices fees, constables fees, witnesses fees,
and jurors fees, or under any other acts in force relating
to such fees, shall be paid upon suits before commissioners;
but the fees distinguished as justices fees shall be received
by the commissioners clerk and paid to the county trea-
surer.

107. The commissioners shall be paid according to the Commissioners
salary.
actual attendance in court, such amount, and the clerk by
such allowance, as the municipal corporation shall appoint;
and the remuneration of the commissioners and clerk shall
not in any thing be made to have relation to or be depen-
dent upon the number of writs issued or judgments
obtained, or the amount of fees collected; and neither
the commissioners nor the clerk shall, on any pretence,
derive any emolument from their office beyond such
allowance. No commissioner or clerk shall be directly or
indirectly employed, or professionally concerned as counsel,
attorney, solicitor, proctor, or advocate, for any party in
any matter pending or to be brought before the court of
which he is commissioner or clerk. No commis-
sioner, &c. to be
employed as at-
torney.

108. Municipal corporations shall make bye-laws for Bye-laws.
enforcing a correct and regular account of the writs issued,
trials had, judgments entered, and costs incurred, in such
judicial district courts, and of the fees paid to the county
treasurer; and shall annually, on or about the thirty-first
day of December, make a return thereof to the governor,
to be submitted to the legislature.

109. The powers and authority which, in chapters one Powers, protec-
tion, &c. of jus-
tices of the
peace transfer-
red to commis-
sioners.
hundred and twenty-eight, one hundred and forty-seven,
and one hundred and fifty-seven, are given to justices of
the peace, are transferred and given to the judicial district
commissioners within their respective districts; and they

CHAP. 133. and the officers executing their process, shall be entitled to the same protection, under the one hundred and fifty and one hundred and fifty-first chapters, as justices of the peace and constables in the like cases are now entitled to.

Council may alter the limits and numbers of districts, and the number of councillors, &c.

110. The municipal councils may, if they see fit, alter the limits and increase or diminish the number of electoral districts in their respective municipalities, and the number of councillors to be elected by each district; and in laying off such districts regard shall be had to the population so as to equalize the number of councillors in that respect as far as possible.

Meeting of councillors.

111. The councillors of any district, or the councillors of any number of districts, in matters relating exclusively to such district or districts, may meet together with the warden, and they shall have full authority to manage all such matters, independent of the control of the council.

Warden, right to vote.

112. The warden or temporary chairman shall have a right to vote on all questions before the council.

Provisions, &c., of chap. 63 extended to municipalities.

113. The provisions of chapter sixty-three "of commissioners of streets," shall extend to all municipalities; and all the powers by such chapter vested in the sessions and grand jury, are hereby vested in the council of the municipality, and the power and authorities of the commissioners are hereby vested in the commissioners to be appointed by such council.

Provisions, &c., of chap. 35 extended to municipalities.

114. All the provisions of chapter thirty-five, "of the census and statistical information," shall extend to the municipalities; and all the powers, authority and duties given and imposed upon the sessions and clerk of the peace shall be exercised and performed by the municipality council and the municipality clerk, and the officers and persons appointed by them to carry out the provisions of that chapter. The municipality councils shall appoint committees of their own body to revise the jury lists in accordance with the acts relating thereto, and shall fulfil all the duties imposed by those acts on the committees of the sessions.

Jury list, revision of.

Public property to be under management of the council.

115. Notwithstanding the ninth clause of chapter ninety-seven, "of trustees of public property," all property of every description belonging to the municipality, or any district or districts, shall be under the management and control of the municipal council, or of the warden and the councillor or councillors of such district or districts.

Purchase of land, &c.

116. Whenever it shall become necessary to purchase land or buildings, or to erect buildings for the use of municipalities, or of townships or districts, the assessment for the amount required therefor may, if it be thought advisable, be made payable by yearly instalments, to be collected and levied on such municipalities, townships, or districts, liable therefor; but such payment shall not be made to extend over a longer period than five years.

117. The election for warden and councillors may be by ballot or otherwise, as shall be determined by the council. CHAP. 133.
Elections.

118. Municipality councils shall appoint commissioners of sewers in their respective districts or counties, who shall have power and authority to carry out the provisions of chapter seventy-two, "of commissioners of sewers, and the regulating of diked and marsh lands," and shall also appoint inspectors of provisions, lumber, fuel, and other merchandize, under the eighty-fifth chapter, except the inspectors of pickled fish. Commissioners
of sewers,

Inspectors of
lumber, &c.

119. The municipality councils shall have the same power and authority respecting commons as is now vested in the sessions, under the seventy-third chapter, "of commons." Commons,

120. All power and authority now vested in, and all duties now imposed on clerks of the peace and town clerks, shall be vested in, and be performed by the municipality clerks. Municipality
clerk, power,
duties of, &c.

121. All the powers and authorities vested in justices of the peace by the ninety-first chapter, "of the maintenance of bastard children;" also by the one hundred and twenty-second chapter, "of masters, apprentices and servants;" also by the one hundred and fifty-ninth chapter, "of offences against religion;" also by the one hundred and sixtieth chapter, "of offences against public morals," shall be exercised by the judicial district commissioners of the municipality. Judicial dis-
trict commis-
sioners, powers
of, &c.

122. The judicial district commissioners may, on good grounds shewn by affidavit, continue a cause to the next monthly meeting. Continuation of
causes.

123. The warden, and any one of the councillors shall have power, on the sworn complaint of the master, to arrest any seaman of a British, provincial, or foreign vessel, who, having signed regular articles, and not being duly discharged therefrom, shall wilfully absent himself from his vessel; and after hearing both parties, if he find the complaint well founded and just, to compel the seaman to return to duty if requisite; also to send him to jail until the vessel is ready for sea, and give the aid of constables in carrying him on board his vessel. Seamen, power
as regards
them.

124. No vote shall pass the municipality council other than the annual vote for the maintenance of the poor, or for ordinary annual county or district purposes, to a greater amount than two hundred dollars, unless the same shall have been sanctioned by the majority of qualified electors present at a public meeting, which shall have been called for the purpose, and presided over by the warden and one of the councillors; of the time and place of which meeting ten days notice shall have been given. Votes of money

125. When any county or district shall hereafter be incorporated the municipal council shall, without delay, Counties to be
aid off in muni-
cipal townships;

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—not to disturb
existing dis-
tricts, &c.

Division, when
to be made.

Number and
limits, how de-
cided.

The inhabi-
tants of muni-
cipal townships
to be bodies
corporate, &c.

Municipal
council.

First election of
councillors,
when held.

Succeeding
elections, when
held.

Elections, how
held.

proceed to lay the county or district off in so many and such municipal townships as shall be most convenient, and which shall not disturb the limits of existing townships, electoral districts, or poor districts, unless there be an unavoidable necessity to do so for the convenient division and arrangement of the whole county or district.

126. Such division shall be made between the first annual meeting of the county council on the second Tuesday of December, and the fifteenth day of March next after, and publication shall be forthwith made in each township of the boundaries of all the proposed municipal townships, with a notice that the county council at its next half-yearly meeting will hear objections.

127. The county council shall, at the next half-yearly meeting in April, consider all objections made by petition or in person to the proposed township divisions, and at their discretion establish, alter, modify or re-arrange the same, and having finally decided on the number and limits of the several municipal townships, shall make immediate publication thereof in each township.

128. Immediately thereupon the inhabitants of each of such municipal townships shall be a body corporate, have perpetual succession and a common seal, with power to break, renew and alter the same, and shall be capable of suing and being sued, of purchasing, acquiring and holding real and personal estate within the township for the use of the inhabitants thereof in their corporate capacity, and of making and entering into such contracts as may be necessary for the exercise of their corporate functions; and their powers shall be exercised by, through and in the name of the municipality of such township.

129. The municipal council of each township shall consist of five councillors, one of whom shall be presiding officer, under the name of town reeve, and the councillors and reeve shall hold office for two years, and until the election of their successors.

130. The first elections of such township councillors shall, after due notice to the respective townships for not less than ten days given by the county council, be held on the third Tuesday in November following, and at such place, and before such presiding officers as shall be appointed by the county council.

131. Succeeding biennial elections shall be held on the third Tuesday of November in each alternate year, at such place and before such presiding officers, and after such notice as the township council shall by any bye-law appoint.

132. Every election shall commence and be continued, closed and notified, as directed in the case of county councillors, by sections eight and nine; the township councillors elect being summoned to meet on the fourth Tuesday of November next after, at such place in the

township as the officer presiding may appoint, until the place of meeting shall be determined by the township council; at which time and place the presiding officer and councillors elect shall meet, and the councillors being sworn into office, the township council shall be organized and proceed to business. CHAP. 133.

133. At the first meeting the township councillors shall elect from among themselves a town reeve in each municipal township, and every town reeve shall *ex officio* be a county councillor. Town reeve,
how elected.

134. There shall annually be held a meeting of the township council on the fourth Tuesday of November, to be called the annual meeting; and such other meetings, either periodical or occasional, as the council shall appoint. The township council may severally adjourn their meetings from time to time, and the town reeve, or in case of his death or absence any two of the town council, may at any time summon a special meeting; the places and times of meeting may be appointed by the township council by bye-law, resolution or adjournment, and the twenty-seventh section shall, as far as applicable, extend to township councils and their meetings. Meetings, how
summoned.

135. The town reeve shall preside at all meetings, or in his absence some member of the council to be selected for the purpose by the members present, who shall for the time have the same authority as the town reeve. President of
meetings.

136. No person shall be entitled to vote at the election of township councillors unless he shall reside in the municipal township, and shall have so resided for the time required for residence in the case of voting for members of assembly. Requirements
for voting.

137. The township council, if they deem it desirable, may divide their township into five electoral wards, and appoint polling places therein, and presiding officers to receive the votes in each polling place; each ward to return one town councillor, who shall be resident within the township. Townships, by
whom divided.

138. The township council, at the first meeting, and at each annual meeting afterwards, or at such other time as they may appoint, shall vote for each poor district in the township the sum they shall judge necessary for the support of the poor in that district, and for the purposes enumerated in the eighty-ninth chapter; and shall appoint overseers of the poor for the existing poor districts within the township until such existing poor districts shall be altered by the town council, which districts they have power from time to time to alter, if they shall see fit to do so. When a poor district lies in more than one municipal township, the councils of the several municipal townships interested, may respectively appoint overseers to meet the circumstances within each municipal township; and the Overseers of
poor, by whom
chosen.

CHAP. 133. several townships interested may make agreements with each other according to the emergency of the case, and if unable to agree, the county council shall have power to make such order as may be agreeable to justice.

Payment of officers.

139. In the case of the first election, each presiding officer shall receive in full for his services two dollars, and each poll clerk employed one dollar.

Clerks and treasurers, rules concerning.

140. Each township municipality shall appoint a clerk and a treasurer, and shall prescribe their duties and the security to be given by each for fidelity in office; and the clerk shall perform within the municipal township all the duties by law required of town clerks.

Portions of the act for municipal government of counties applied to township municipalities.

141. The following sections, as far as the same are, or may be applicable, and with such changes of terms as may be necessary to make them applicable to townships and township municipalities, shall apply to township municipalities created under this chapter, that is to say: sections eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-five, twenty-nine, thirty, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-nine, forty, forty-two, forty-four, forty-five, forty-six, forty-seven, fifty-four, fifty-five, sixty, sixty-four, sixty-eight, sixty-nine, seventy, seventy-one, seventy-two, seventy-three, seventy-five, seventy-six, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-five, eighty-six, eighty-seven, eighty-eight, ninety, ninety-one, ninety-five; also, so much of sections sixty-nine, seventy-three and ninety-four, as apply to townships or township business or officers; and also the following division or sub-sections of the sixty-sixth section viz., I., II., III., except as relates to provincial road money, and the IX. to the XVI., both inclusive, as far as applicable; and also the schedule of oaths. The township council may, by resolution or bye-law, make regulations on the subject matters of the thirty-first and thirty-second sections; also, may determine what, if any, remuneration, shall be paid to the town reeve and town councillors for their attendance and services.

Words applicable to the county shall be construed as applicable to the township.

142. When in the above portions of this chapter the words county, or council, or municipality, or councillor, or warden, or municipality clerk, or elector, or synonymous words occur, they shall respectively be construed to mean township* or town council, or township municipality, or township councillor, or town reeve, or town clerk, as the case may be, unless otherwise expressed, or the sense forbid the change.

Sections inconsistent with this chapter shall cease, and the following come into operation.

143. When municipal townships shall come into operation, the powers granted under the forty-third section, and other sections inconsistent with the sections from one hundred and twenty-five to one hundred and forty-two, inclusive, shall cease.

CLAUSES FOR ADAPTING THE COUNTY MUNICIPALITY TO TOWNSHIP INCORPORATIONS. CHAP. 133.

144. After township incorporations shall be adopted, and the municipal townships laid out and notified in any incorporated county or district, the sections next following shall come into operation therein, that is to say:

145. Thereafter in those counties or districts no election of county councillors shall take place.

Election of county councillors shall not take place. Municipal council, how elected.

146. In such incorporated counties or districts, the town reeves of the several municipal townships shall constitute the municipal council; they shall continue in office two years, and until their successors are appointed, commencing their duties on the second Tuesday of December after the first and every subsequent general or bi-annual election of town councillors, at which time the county councillors shall go out of office.

147. On the second Tuesday of December after the first, and after each subsequent general or bi-annual election, the county council, and the recently elected town reeves, shall assemble at the county or district court house. The town reeves shall respectively exhibit and lodge with the county clerk a certificate of their election as township reeves, signed by the town clerk of the respective township municipalities, and they shall forthwith take the oath of office as county councillors, and then enter upon the duties of their office, and shall immediately proceed to elect by majority of votes from among themselves, a warden, who shall take the oath of office, and shall then enter upon the duties of his office, and who shall be subject to the twenty-first section; and in case the person so elected shall not qualify and serve in the said office, the county council shall choose, by a majority of votes from among themselves, a warden duly qualified, until one shall be found willing to serve.

Election of wardens.

148. The warden shall have all the authority of county councillor; he shall hold office for two years, and thereafter till his successor be appointed and has qualified, and he may be re-elected. Whenever a vacancy occurs during the term of office, by death, resignation, or otherwise, the council shall, at its first meeting thereafter, elect a warden for the remainder of the time. During the temporary absence of the warden his place may be filled by a chairman for the time being, with all the authority of the warden, to be chosen by the members present.

Authority, &c. of wardens.

149. It is declared that the first municipal election in any county or district hereafter to be incorporated, is to take place on the third Tuesday of November next after its incorporation; and the first meeting of the county councillors then elected is to be held on the second Tuesday of December then next after. Until such first meeting of the county council, the existing authorities and modes of

Elections, &c. when held; power of councils; relative duties of county and township councils.

CHAP. 133. administering the affairs of the county, and of the townships and districts therein, are to continue in force. On the organization of the county council at that meeting, and from thence until its next succeeding annual meeting, the county council is to administer the affairs of the county, and of the townships and districts therein, under and in conformity with the provisions of this chapter.

Township
councillors;
election of,
powers, &c.

150. On the third Tuesday of November next after the said first meeting of the county council, the first election of township councillors is to take place, instead of the election of county councillors; and on the fourth Tuesday of November next thereafter, the first meetings of the township councils are to be held, and on the second Tuesday of December then next following, being the second annual meeting of the county council, the newly constituted county council is to be organized, and thenceforth the administration of the county and the township affairs is to be separated, and all the powers and jurisdiction over township affairs, which are given to the county council, and which are given to the township councils, shall thereafter no longer be exercised by the county council, but shall exclusively be vested in and be exercised by the township municipalities; and all other the powers and jurisdiction given to the county municipalities, and not herein given to the township municipalities, shall continue to be exclusively vested in and exercised by the county municipalities; provided that assessors, collectors, overseers and other ministerial officers, having duties commenced, and not completed, on the occasion of any of the said changes of authority and jurisdiction, shall continue to have legal authority for the completion of such duties, unless the council coming into authority shall otherwise order; and they shall make return, and account to such council according to its direction, and otherwise obey its authority.

SCHEDULE OF OATHS.

Oath of office, to be taken by all persons appointed to any office or duty under this chapter for which no oath of office is specially provided.

I, A. B., do solemnly swear [or affirm where the party is entitled to affirm,] that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the office of [inserting the name of the office, as presiding officer, or clerk at the elections, or warden, councillor, county clerk, &c., &c., as the case may be,] to which I have been elected [or appointed] in this municipality, and that I have not received, and will not receive any payment or reward, or promise of such, for the exercise of any partiality or malversation, or other undue execution of the said office. So help me God.

Oath of office for the auditors.

CHAP. 133.

I, A. B., do solemnly swear [*or affirm when the party is entitled to affirm,*] that I will faithfully and impartially to the best of my knowledge and ability, execute the office of auditor, to which I have been appointed in this municipality, and that I have not received, and will not receive, any payment or reward, or promise of such, for the exercise of any partiality or malversation, or other undue execution of the said office; and that I have not, during the time preceding my appointment to the said office of auditor, and that I have not since, had, and that I have not now, directly or indirectly, any share or interest whatever in any contract or employment, with, by, or on behalf of the municipal corporation of ———. So help me God.

Oath of qualification.

I, A. B., do swear [*or affirm*] that I am a natural born [*or naturalized*] subject of her majesty, and, that I am by law qualified to be elected to the office of ———, in the municipality of ——— according to the true intent of chapter one hundred and thirty-three, and that a correct account, to the best of my knowledge and belief, of the property in respect whereof I claim to be so qualified, is contained in the schedule hereunto annexed. So help me God.

SCHEDULE A.

County of King's.

Each electoral district shall return two councillors, except the Aylesford district, which shall return four councillors.

County of Queen's.

Three councillors to be returned for electoral district number one.

County of Yarmouth.

In the district of Yarmouth three councillors shall be returned for electoral district No. 2, and one councillor for electoral district No. 4,

CHAP. 134.

TITLE XXXVI.

OF COURTS AND PROCEEDINGS THEREIN.

CHAPTER 134.

OF PLEADINGS AND PRACTICE IN THE SUPREME COURT.

Part the First.

WRITS OF MESNE PROCESS.

Writs of mesne process.

Commencement of actions.

Forms.

Form of action, mention of unnecessary.

Teste abolished—writs when dated.

Writ to contain declaration.

Affidavit to hold to bail.

1. All personal actions shall be commenced by writ of summons or replevin, and in case of absconding debtors, summons or attachment, in the forms set forth respectively in appendix A. numbers 1, 2, 3, 4 and 5; and where the amount claimed is under eighty dollars, the writ shall be marked on the back thereof, summary cause; and every writ shall be subscribed with the name of the plaintiff issuing the same, and with his place of abode, or with the name of the attorney issuing the same.

2. It shall not be necessary to mention any form of action in the writ or other proceedings.

3. The teste of all writs, whether of mesne process or otherwise, shall be abolished, and every writ shall be dated by the prothonotary the day it is issued.

4. The writ shall contain the declaration according to the practice now adopted in summary causes, and to the forms in appendix B, except in very special cases, where the declaration may be annexed or served separately; but no charge shall be allowed therefor, unless, on taxation, the judge shall deem such course to have been proper under the circumstances.

5. If a plaintiff, in any action commenced by summons, in which the defendant is now liable to arrest, whether upon the order of a judge or commissioner, or without such order, shall, at or after the commencement of such action, by affidavit of himself, or some other person, shew, to the satisfaction of a judge or commissioner, that such plaintiff has a cause of action against the defendant or defendants, to the amount of twenty dollars or upwards, or has sustained damage to that amount, and that the plaintiff has probable cause for believing, and does believe, that the defendant is about to leave the province, and that he fears that the debt will be lost unless such defendant is forthwith arrested, such judge or commissioner may, without requiring in such affidavit any statement of the plaintiff's ground for such belief, by a special order, direct that such defendant so about to quit the province, shall be held

See Cap 10. Act of 1865. for various alterations of the law

to bail for the amount of the debt or damage sworn to, or CHAP. 134.
 in the case of unliquidated damages, for such sum as the
 judge or commissioner shall think fit; and thereupon the
 plaintiff within the time expressed in such order, but not
 afterwards, may sue out one or more writ or writs of *capias* Capias.
 into one or more different counties, as may be required,
 against any such defendant, so directed to be held to bail,
 which writ shall be in the form in appendix A, number 6; Form.
 provided always that nothing in this section contained Proviso.
 shall operate to prevent a defendant so arrested from
 negating, under affidavits before a judge or commis-
 sioner, the fact of his being about to leave the province;
 and upon such affidavit, if the same is not contradicted
 on the part of the plaintiff, such judge or commissioner
 shall, in his discretion, order his discharge from custody
 with or without costs. Where a defendant is ordered to
 be held to bail under this section, after he has appeared to
 the action, the form of the bail bond in the appendix
 A, number 24, shall be modified accordingly. Bail bonds.

6. The sheriff shall, within one month after the date of Bail, how taken.
 such *capias*, but not afterwards, proceed to arrest such
 defendant thereupon, and he shall remain in custody until
 he shall have given a bail bond to the sheriff, or shall have
 made deposit of the sum endorsed on such writ of *capias*, Deposit.
 together with forty dollars for costs; and the sheriff shall
 make return of his writ immediately upon the execution
 thereof, or at the expiration of the month if not executed.

7. Where the defendant shall be described in the pro- Wrong name,
initials, or want
of christian
name in affida-
vit.
 cess or affidavit to hold to bail by initials, or by a wrong
 name, or without a christian name, the defendant shall
 not be discharged out of custody, or the bail bond delivered
 up to be cancelled, if it shall appear by the affidavit that
 due diligence has been used to obtain a knowledge of the
 proper name.

8. Where a defendant is committed to jail on mesne Where defend-
ant under ar-
rest, and plain-
tiff does not
proceed.
 process, and the plaintiff does not proceed to trial in the
 term next after his committal, or in the sittings thereafter,
 the defendant shall be discharged—provided he was ready Proviso.
 for trial at such term or sittings, and had pleaded issuably
 to the declaration, if served upon him, and given notice
 of his readiness for trial on the first day of such term or
 sittings, or before, or when the cause is called, and pro-
 vided the cause had been called for trial, and also provided
 the court shall not, on sufficient cause shewn on affidavit,
 be of opinion that the defendant ought not to be dis-
 charged.

9. There shall be no special return days for writs of Writs, when re-
turnable.
 summons, writs of replevin and writs of attachment and
 summons against absent or absconding debtors, or their
 agents or trustees, or writs of certiorari; but such writs
 shall be returnable within ten days after the service

CHAP. 134. thereof, if the defendant or party served shall reside in the county in which the action is brought; within twenty days after service if he shall reside in any other county, except in the island of Cape Breton; and within thirty days if he shall reside in the island of Cape Breton and the action is brought in any county not in the island; or if he shall reside out of the island and the action is brought in any county within the island; and judgment may be entered against the defendant if he shall not appear and plead within four days after the expiration of such periods of ten, twenty or thirty days, as the case may be; and in cases where a writ of summons, with the usual notice endorsed, is served in any county other than that specially named in the direction of the writ, the defendant shall be entitled and required to appear and plead in the same number of days as if the county wherein he is served had been specially named in the writ.

Form of, how altered.

10. The writs shall summon the defendant to appear "within ten, twenty, or thirty days [*as the case may be*]" after the service of this writ." *See Sec 30.*

Writs, how directed and executed.

11. Writs shall be directed thus: To the sheriff of —, or to any other of our sheriffs; and may be executed by any sheriff within his bailiwick, and concurrent writs may be issued.

Endorsement on return.

12. The sheriff shall in his return on every writ of mesne process state the very day on which it was served, and shall not be allowed any fees on process served by him where the return is not so made.

Lord's day, no service on.

13. No person upon the Lord's day shall serve or execute any civil writ or process, but the service thereof shall be void, and the party serving the same shall be liable to the party aggrieved, as if he had executed the same, without any writ or process.

Service of writ.

14. The service of the writ whenever practicable shall be personal, but the plaintiff shall be at liberty to apply, from time to time, if necessary, on affidavit to the court or a judge, who may, if satisfied that the writ has come to the knowledge of the defendant, or that he wilfully evades service and that reasonable efforts have been made to effect personal service, order that the plaintiff be at liberty to proceed as if personal service had been effected, subject to such conditions as to the court or a judge may seem fit.

Ditto on corporations.

15. Writs against a corporation may be served on the principal officer, or on the clerk or secretary.

Particulars.

16. The plaintiff shall annex, or endorse on his writ and copy thereof, the particulars of his claim in the form, or to the effect contained in appendix A, number 7, in all cases where the claim is for a debt, or liquidated demand in money, with or without interest arising upon a contract express or implied.

17. If such particulars are not given, the plaintiff shall not be entitled to final judgment on non-appearance of defendant. CHAP. 134.
Effect of non-delivery of.

18. The plaintiff's particulars shall give credits, if there be any. To give credits.

19. Notice of trial may be endorsed on writs of summons. Notice of trial.

20. A set-off by defendant shall be pleaded, and he shall annex to, or endorse on his plea, and copy thereof, particulars of such set-off, giving credits, if there be any, and in default, his plea may be treated as a nullity; such particulars shall be assimilated in form to those in appendix A, number 7. Set off; plea of: particulars of.

21. Neither plaintiff nor defendant shall be at liberty to adopt his adversary's particulars, without at the same time admitting the adverse side of the account or claim as presumptive proof thereof. Particulars of demand or set-off adopted by either party.

22. A summons for particulars and order thereon may be obtained from a judge or the prothonotary, by either party, without the production of any affidavit, but a summons and order for further or better particulars stating dates, credits, &c., or for amending particulars, shall be granted only by a judge, and upon affidavit. Summons for particulars.

23. A defendant shall be allowed the same time for pleading, after the delivery of particulars under a judge's or prothonotary's order, which he had at the return day of the summons for particulars; nevertheless, judgment shall not be signed until the day after the delivery of particulars, unless otherwise ordered by a judge or prothonotary, and the judge or prothonotary may order further time. Time to plead after delivery of particulars.

APPEARANCE AND JUDGMENT FOR NON-APPEARANCE.

24. In case of non-appearance, where particulars are annexed or endorsed, the plaintiff may, after the time for appearance has elapsed, sign final judgment, which may be entered in the form given in appendix A, number 8, and on which no proceeding in error shall lie, for any sum not exceeding the sum mentioned in the particulars, with interest, at the rate specified, if any, to the date of judgment and taxed costs; but the plaintiff shall not, in such case, be entitled to recover any sum beyond the sum so mentioned, with interest and costs. Judgment by default.

25. A party may appear at any time before judgment by default, and if he appear after the time specified in the writ of summons, he shall, after notice of such appearance to the plaintiff or his attorney, as the case may be, be in the same position, as to pleadings and other proceedings in the action, as if he had appeared in time; provided always that a defendant appearing after the time appointed by the writ, shall not be entitled to any further time for pleading or any other proceedings, than if he had appeared within such appointed time. Appearance.

After time for pleading elapsed and before judgment.

CHAP. 134.

Parties admitted to defend after final judgment.

26. It shall be lawful for the court or a judge upon such terms as to costs or otherwise as they shall think fit, at any time, within one year after final judgment, to let in the defendant in any action or appeal to defend the same, upon an application supported by satisfactory affidavits accounting for the non-appearance, and disclosing a defence upon the merits with the particular grounds thereof, and affidavits shall not be received in reply unless the court or a judge shall otherwise order.

Judgment by default when particulars not given.

27. In case of non-appearance, where the particulars are not given, judgment by default may be signed at the expiration of the time for appearance, but no costs shall be allowed in respect of assessment of damages unless it appear that the plaintiff could not conveniently furnish the particulars at the time of the issue of the writ.

Assessment of damages where default marked.

28. In actions for the recovery of debts, where a judgment for default has been marked, the court or a judge may assess the damages on competent evidence in writing, or *viva voce*, and the attendance of witnesses and production of documents before the court or a judge may be enforced by subpoena, in the same manner as upon the trial of a cause before a jury. Upon such assessment, signed by the judge or prothonotary, being filed, the costs in the action may be taxed, and final judgment entered thereon.

Jury may be demanded or ordered.

29. Either party, upon due application to the court or a judge, may have the assessment made by a jury, or at any assessment to be made before the court, if the court should think fit, by a special jury; and at any assessment before a judge he may order such assessment to be made by a jury.

Appearance and plea, time for.

30. The defendant shall appear and plead within four days after the time specified in the writ for his appearance.

Notice to appear and plead endorsed on writ.

31. Every writ by which an action is commenced, except in ejectment, shall be endorsed with the notice in the form in Appendix A, number 9.

Appearance by defendant in person.

32. Every appearance by the defendant in person, shall contain an address, at which it shall be sufficient to leave all pleadings and other proceedings not requiring personal service; and if the address be not given, the plaintiff may proceed by sticking up the proceedings in the prothonotary's office, without further service, until the true address be given.

Service of pleadings on defendant appearing in person.

When one of several defendants only appears.

33. In any action brought against two or more defendants, where the writ of summons is endorsed in the special form hereinbefore provided, if one or more of the defendants shall only appear, and another or others of them shall not appear, it shall be lawful for the plaintiff to sign judgment against such defendant or defendants only as shall not have appeared, and to issue execution thereupon, in

which case he shall be taken to have abandoned his action against the defendant or defendants who shall have appeared, and such defendant or defendants shall be entitled to their costs; or the plaintiff may, before issuing such execution, proceed against such defendant or defendants as shall have appeared, stating, by way of suggestion, the judgment obtained against the other defendant or defendants who shall not have appeared, in which case the judgment so obtained against the defendant or defendants who shall not have appeared, shall operate and take effect, whether the plaintiff succeeds against the other defendant or defendants or not.

CHAP. 134.

34. It shall not be necessary to file warrants of attorney to prosecute or defend.

Warrants to prosecute or defend unnecessary.

35. Common bail is abolished, and the appearance shall be in the form in appendix A, number 10.

Common bail abolished.

JOINDER OF PARTIES.

36. The joinder of too many plaintiffs shall not be fatal to any action, but the plaintiff or plaintiffs entitled may recover.

Joinder of too many plaintiffs

37. The defendant in any action in which there is more than one plaintiff, on pleading a set-off may obtain the benefit of the set-off on proving, either that all the parties named as plaintiffs are indebted to him, notwithstanding that one or more of such plaintiffs was or were improperly joined, or on proving that the plaintiff or plaintiffs, or any or either of them who establish their right to maintain the action, was or were indebted to him.

Set off against plaintiff improperly joined.

38. The non-joinder of a person as plaintiff in any action, shall be a variance to be amended at, or at any time before, the trial by the court or a judge, if it shall appear that such non-joinder was not for the purpose of obtaining an undue advantage, and that injustice would not be done by amending, and that the omitted party consent to be joined as a co-plaintiff; provided, however, that no such amendment shall be made if the defendant shall, at or before the time of pleading, have given notice to the plaintiff that he objects to such non-joinder; and also that when a plaintiff shall be added, the defendant shall be at liberty to withdraw his plea, and allow judgment to be entered against him, in which case the defendant shall be entitled to tax his costs up to the time of the plaintiff's being added, and have execution against the plaintiff therefor.

Non-joinder of plaintiff.

39. In case such notice be given, or any plea of non-joinder be pleaded, the plaintiff shall be at liberty to amend the writ and other proceedings, by adding the name of the person alleged to have been improperly omitted as plaintiff, on payment of costs, and with liberty for the defendant to plead anew.

How amended.

CHAP. 134.

Too many defendants.

40. Where too many defendants are joined in an action on contract, the plaintiff shall be at liberty to recover against such defendant or defendants as appear to be liable, and the other defendants shall be acquitted with like provisions respecting set-off, and evidence as in the case of too many plaintiffs, and the defendants so acquitted shall be entitled to their costs.

Plea in abatement of non-joinder.

41. Upon a plea in abatement of non-joinder of a contractor as defendant, the plaintiff may amend his writ, serve the amended writ on the added defendant, and proceed against both, and the date of such amendment shall, as between such added defendant and the plaintiff, be considered the commencement of the suit.

Costs.

42. In such case, if upon the trial of the cause, it shall appear that the added defendant was jointly liable with the original defendant, the original defendant shall be entitled to the costs of the plea in abatement and amendment; but if at the trial it shall appear that the plaintiff cannot maintain his action against the original and added defendants, but can maintain his action against the original defendant alone, the added defendant shall be acquitted with costs, and the plaintiff shall be entitled to recover against the original defendant with costs, including those of the plea in abatement, and such costs as the plaintiff may have to pay the added defendant.

In actions by husband and wife claims of husband alone may be joined.

43. In any action brought by a man and his wife, for an injury to the wife, in respect of which she is a necessary plaintiff, there may be joined claims by the husband alone, and the damages may be set out as to the husband alone; but in the case of the death of either plaintiff the suit so far only as relates to the causes of action, if any, which do not survive, shall abate.

Death of parties.

44. The death of a plaintiff or defendant shall not cause the action to abate, but it may be continued in manner and under the restrictions hereinafter mentioned.

Of one of several parties.

45. If there be two or more plaintiffs or defendants and one or more of them should die, if the cause of such action shall survive to such surviving plaintiff or plaintiffs, or against the surviving defendant or defendants, the action shall not be thereby abated, but such death being suggested upon the record, the action shall proceed at the suit of the surviving plaintiff or plaintiffs against the surviving defendant or defendants.

Of sole plaintiff.

46. In case of the death of a sole plaintiff, or sole surviving plaintiff, the legal representative of such plaintiff may at any time within two years after such death, by leave of the court or a judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the cause of action of deceased plaintiff; and

such judgment shall follow upon the verdict in favor of or against the person making the suggestion, as if such person were originally the plaintiff; and the defendant or person against whom the action may be so continued may apply by summons to compel the plaintiff, or person entitled to proceed with the action in the room of the plaintiff, to proceed according to the provisions of this chapter, within such time as the judge shall order, and in default of such proceeding the defendant, or other person against whom the action may be so continued as aforesaid, shall be entitled to enter a suggestion of such default, and of the representative character of the person by or against whom the action may be proceeded with, as the case may be, and to have judgment for the costs of the action and suggestion against the plaintiff, or against the person entitled to proceed in his room, as the case may be, and in the latter case to be levied of the goods of the testator or intestate.

47. In case of the death of a sole defendant or sole surviving defendant, where the action survives, the plaintiff may make a suggestion, either in any of the pleadings if the cause has not arrived at issue, or in the issue, if it has so arrived, of the death, and that a person named therein is the executor or administrator of the deceased, and may thereupon serve such executor or administrator with a copy of such writ and suggestion, and with a notice signed by the plaintiff or his attorney, requiring such executor or administrator to appear and plead within twelve, eighteen or twenty-five days, as the case may be, after service of the notice; and that in default of his so doing, the plaintiff may sign judgment against him as such executor or administrator, and the same proceedings may be had in case of non-appearance and plea, after such notice as upon a writ against such executor or administrator, in respect of the cause for which the action was brought; and in case no pleadings have taken place before the death, the suggestion shall form part of the declaration, and the declaration and suggestion may be served together, and the new defendant shall plead thereto at the same time, and in case the plaintiff shall have served his declaration, but the defendant shall not have pleaded before the death, the new defendant shall plead at the same time to the declaration and suggestion, and in case the defendant shall have pleaded before the death, the new defendant shall be at liberty to plead to the suggestion, only by way of denial, or such plea as may be appropriate and rendered necessary by his character of executor or administrator, unless, by leave of the court or a judge, he should be permitted to plead fresh matter in answer to the declaration, and in case the defendant shall have pleaded before the death, but the pleadings shall not have arrived at issue, the new defendant, besides pleading to the suggestion, shall continue the

CHAP. 134.

Of sole defendant.

CHAP. 134. pleadings to issue in the same manner as the deceased might have done, and the pleadings upon the declarations and pleadings upon the suggestion shall be tried together, and in case the plaintiff shall recover, he shall be entitled to the like judgment, in respect to the debt or sum sought to be recovered, and in respect of the costs, prior to the suggestion, and in respect of the costs of the suggestion and subsequent thereto, as in an action originally commenced against the executor or administrator.

The death of either party between verdict and judgment.

48. The death of either party, between the verdict and the judgment, shall not hereafter be alleged for error, so as such judgment be entered within two terms after such verdict, or such other time as the court may allow.

Of plaintiff after interlocutory and before final judgment.

49. If the plaintiff in any action happen to die after an interlocutory judgment or verdict, and before a final judgment obtained therein, the action shall not abate by reason thereof, if such action might be originally prosecuted or maintained by the executor or administrator of such plaintiff; and if the defendant die after such interlocutory judgment or verdict, and before final judgment obtained therein, the action shall not abate, if such action might be originally prosecuted or maintained against the executor or administrator of such defendant, and the plaintiff, or if he be dead after such interlocutory judgment, his executors or administrators, may have a writ of revivor against the defendant, if living, after such interlocutory judgment or verdict, or if he be dead, then against his executors or administrators, to shew cause why damages in such action should not be assessed and recovered by him, or them; and if such defendant, his executors, or administrators, shall appear at the return of such writ, and not show or allege any matter sufficient to arrest final judgment, or shall make default, damages shall be thereupon assessed as hereinbefore provided; and upon the return of the writ or delivery of the order, with the amount endorsed thereon, judgment final shall be given for the plaintiff, his executors or administrators, prosecuting such writ of revivor against such defendant, his executors, or administrators respectively.

Marriage of a woman, plaintiff or defendant.

50 The marriage of a woman, plaintiff or defendant, shall not cause the action to abate, but the action may notwithstanding be proceeded with to judgment, and such judgment may be executed against the wife alone, or by suggestion or writ of revivor, pursuant to this act, judgment may be obtained against the husband and wife, and execution issue thereon, and in case of a judgment for the wife, execution may be issued thereupon by the authority of the husband, without any writ of revivor or suggestion, and if in any such action the wife shall sue or defend by attorney, appointed by her when sole, such attorney shall have authority to continue the action or defence, unless

such authority be countermanded by the husband, and the attorney changed according to the practice of the court. CHAP. 134.

QUESTIONS RAISED BY CONSENT WITHOUT PLEADING.

51. The parties, after writ issued, may, by leave of the court or a judge, state any question for trial, which they may think fit, without any pleadings, and with or without an agreement; that according as it may be determined an agreed sum of money, or a sum to be ascertained by the jury, shall be paid, and as to payment of costs. Damages and costs.

52. Upon such finding, judgment may be entered, and the proceedings recorded. Judgment.

53. Questions of law, after writ issued, may be stated for the opinion of the court, without pleading, and with similar agreements as to money and costs to be recovered, and with or without an agreement to bring errors, which may be brought when agreed. Questions of law after writ.

PLEADING.

54. Every declaration, whether in the body of the writ or annexed, and subsequent pleadings which shall clearly and distinctly state all such matters of fact as are necessary to sustain the action, defence, or reply, as the case may be, shall be sufficient, and it shall not be necessary that such matters should be stated in any technical or formal language or manner, or that any technical or formal statements should be used. Declaration, sufficiency of.

55. All statements which need not be proved, such as the statement of time, quantity, quality and value, where these are immaterial, that of losing and finding, and bailment in actions for goods or their value; the statement of acts of trespass having been committed with force and arms, and against the peace of our lady the queen; the statement of promises which need not be proved, as promises in indebitatus counts and mutual promises to perform agreements and the like statements, shall be omitted; and when any clearly unnecessary statement is made, or any statement is made with unnecessary prolixity, as for instance, where evidence of the fact is pleaded instead of or as well as the matter of fact itself, or otherwise, it may be struck out or amended by the court or a judge with or without costs. Immaterial statements in, to be omitted.

56. In summary causes the defendant shall not be required to file or serve a written plea, but he shall serve a written notice of appearance, in which he shall state briefly the grounds of his defence, and, if he means to rely upon a set-off, he shall serve the plaintiff or his attorney with the particulars thereof. No plea in summary causes.

57. No venue shall be changed without a special order of the court or a judge, unless by the consent of the parties. Change of venue.

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No venue in
body of writ.

58. The name of the county in the writ shall in all cases be taken to be the venue intended by the plaintiff, and no venue shall be stated in the body of the writ or declaration, or in any subsequent pleading; provided that in cases where local description is now required, such local description shall be given.

Demurrer to
pleadings.

59. Either party may object by demurrer to the pleadings of the adverse party, on the ground that such pleading does not set forth sufficient ground of action, defence, or reply, as the case may be; and where issue is joined on demurrer, the court shall proceed and give judgment according as the very right of the cause and matter in law shall appear unto them, without regarding any imperfection, omission, defect in, or lack of form; and no judgment shall be arrested, stayed, or reversed for any such imperfection, omission, defect in, or lack of form.

May plead and
demur, by
leave.

60. Either party may by leave of the court or a judge, plead and demur to the same pleading at the same time, and it shall be in the discretion of the court or a judge which issue shall be first disposed of.

Defects in form,
omissions, &c.

61. Except in the cases hereinafter particularly mentioned, no pleading shall be deemed insufficient for any defect now objectionable on special demurrer only.

Duplicity, argu-
mentativeness,
uncertainty.

62. Duplicity, argumentativeness, and uncertainty, shall be no longer grounds of objection to a pleading, unless the effect of such duplicity, argumentativeness, or uncertainty shall be to embarrass the opposite party; but if any pleading by reason of duplicity, argumentativeness, or uncertainty, shall be so framed as to embarrass or mislead the opposite party, it shall be competent to the latter to apply to a judge to have such pleading amended, which application shall be by summons, wherein the party shall state the particular ground of objection, and require that the pleading be amended.

Amendment,
demurrer in
default of.

63. Upon the hearing of such summons, if the judge shall be of opinion that the objection is well founded, and that the pleading is, in the matter objected to, so pleaded as to embarrass or mislead the opposite party, he may order the party pleading to amend in such manner as he may direct upon payment of costs; and in the event of such amendment not being made within a limited time, the party complaining shall be at liberty to demur, but if the judge shall not be of such opinion, he shall dismiss the summons with costs, and the party complaining shall have no further right of objection as to the point mentioned in the summons, or as to any other point of duplicity, argumentativeness, or uncertainty.

Powers conferred
by two last
secs. may be
exercised by
court.

64. The powers conferred upon a judge under the two last sections, may be exercised by the court.

Demurrer filed
by leave.

65. A demurrer on any such ground shall state that it is pleaded by leave, and shall repeat the objection taken in the summons and that only.

66. Upon the argument of such demurrer the court shall give judgment according to the validity or invalidity of the specified objection and the substance of the pleading. CHAP. 134.
Judgment on demurrer.

67. The form of a demurrer shall be as follows : Form of.

The plaintiff [*or defendant*] by ——— his attorney, [*or in person*] says that the declaration [*or plea, &c.*] is bad in substance, for the following reasons, viz. :

68. The form of a joinder in demurrer in all other cases shall be as follows : Form of joinder.

The plaintiff [*or defendant*] says that the declaration [*or plea, &c.*] is good in substance.

69. In every demurrer some matter of law intended to be argued shall be stated; and if any demurrer shall be delivered without such statement, or with a frivolous statement, it may be set aside as irregular by the court or a judge, and leave may be given to sign judgment as for want of a plea; but the party demurring may, at the time of the argument, insist upon any further matters of law, which have been added to the demurrer by a judge's order. Matters of law to be stated.

70. No rule for joinder in demurrer shall be required, but the party demurring may demand a joinder in demurrer; and the opposite party shall be bound within ten days after such demand to deliver the same, otherwise judgment. Demand of joinder substituted for rule.

71. The court or a judge shall, in all cases, have power on such terms as to costs or otherwise as they shall think fit, to set aside, in whole or in part, false, frivolous or vexatious pleadings, and pleadings colourably amended in pretended compliance with a judge's order to amend. False, frivolous or vexatious pleadings may be set aside.

72. All statutory enactments allowing parties to plead the general issue or other general plea, and to give special matter in evidence, under such plea, are repealed. General issue by statute abolished.

73. The forms contained in appendix B, shall be sufficient, and those and the like forms may be used, with such modifications as may be necessary to meet the facts of the case; but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms, so long as the substance is expressed without prolixity. Forms.

74. In all actions upon bills of exchange and promissory notes, pleas that the defendant "never was indebted," or "did not promise as alleged," shall be inadmissible. In such actions, therefore, a plea in denial must traverse some matter of fact: for example, the drawing, or making, or endorsing, or accepting, or presenting, or notice of dishonor, of the bill or note. Pleas
In actions upon bills of exchange.

75. In every species of actions on contracts, all matters in confession, and avoidance, including not only those by way of discharge, but those which show the transaction to be either void or voidable in point of law on the ground On contracts.

CHAP. 134. of fraud or otherwise, shall be specially pleaded: for example, infancy, coverture, release, payment, performance, illegality of consideration, either by statute or by common law, drawing, endorsing, accepting, &c., bill or note by way of accommodation, set off, mutual credit, unseaworthiness, misrepresentations, concealment, deviation, and various other defences, must be pleaded.

On policies of assurance, &c.

76. In actions on policies of assurance, the interest of the assured may be averred thus:—"That A. B. C. and D. [or some or one of them] were or was interested," &c.; and it may be also averred, "that the insurance was made for the use and benefit and on the account of the person or persons so interested."

On specialties.

77. In actions on specialties and covenants, the defendant's plea that the alleged deed is not his deed shall operate as a denial of the execution of the deed in point of fact only; and all other defences shall be specially pleaded, including matters which make the deed absolutely void as well as those which make it voidable.

"Nil debet."

78. The plea of "*nil debet*" shall not be allowed in any action.

Matters in confession.

79. All matters in confession and avoidance shall be pleaded specially as above directed in actions on simple contracts.

Fraud to be pleaded.

80. Where a defendant intends to set up fraud as a defence to the declaration, or a plaintiff to rely upon fraud in answer to the plea of the defendant, it must be pleaded, but fraud may be proved without plea, in answer to any matter of evidence not upon the record.

Replication.

81. In all cases the plaintiff may reply without the leave of the court or a judge, and where the plaintiff shall not reply before trial, or within thirty days after the service of the pleas, he shall be taken to have denied the facts alleged therein; but the court or a judge may give leave to reply after the expiration of the thirty days.

Payment.

82. Payment shall not in any case be allowed to be given in evidence in reduction of damages or debt unless the same shall be pleaded in bar.

Actions for wrongs.

83. In actions for wrongs independant of contract a plea that the defendant *did not do* what is complained of by the plaintiff, shall operate as a denial only of the breach of duty, or wrongful act, alleged to have been committed by the defendant, and not of the facts stated in the inducement, and no other defence than such denial shall be admissible under that plea. All other pleas in denial shall take issue on some particular matter of fact alleged in the writ or declaration; and all matters in confession or avoidance shall be pleaded specially as in actions on contracts.

For trespass.

84. In actions for trespass to land, a plea that the defendant did not commit the trespass complained of shall

* In 1866 Capl. sec. 7. See 86. of this Cap. is repealed. The following is added. "Attorneys & Solicitors bills of costs may be paid and recovered as any other debt, and either party may bring this bill at any time before or after the trial."

operate as a denial that the defendant committed the trespass alleged in the place mentioned, but not as a denial of the plaintiff's possession or right of possession of that place, which, if intended to be denied, must be traversed specially. CHAP. 134.

85. In actions for taking, damaging, or converting the plaintiff's goods, a plea denying the defendant's having committed the wrong alleged by taking, damaging, or converting the goods mentioned, shall not operate as a denial of the plaintiff's property therein, which, if intended to be denied, must be traversed specially. For taking goods, &c.

86. There shall be no further pleadings after the plea of the defendant, except a demurrer thereto, or a replication to a plea of set off, or plea of matter occurring subsequently to the commencement of the action, unless by the special leave of the court, or a judge, or an application to allow such further pleading, which shall only be allowed in case the real question or questions, whether of fact or law between the parties, cannot conveniently be raised and put in issue by the amendment of the previous pleadings; and where there is no replication the plaintiff shall be taken to have joined issue on the defendant's pleas. No further pleadings.

87. Express colour, profert, oyer and special traverses, are abolished. Express color, profert, oyer, &c., abolished.

88. Each party shall be entitled to demand of the other a copy or inspection, or both copy and inspection, in whole or in part, of any deed, agreement, bill, or other written document, mentioned or referred to in his pleading, or in any paper therein referred to, or whereof inspection could be obtained by a bill of discovery; and in the event of such copy not being delivered, or such inspection not being granted, shall be entitled to apply to the court or a judge for an order for such copy or inspection, or both, as the court or a judge may think fit. Inspection of papers and copies may be demanded.

89. Such demand, summons, or order, shall be no stay of proceedings, unless specially ordered; and the court or a judge may impose such conditions for enforcing obedience thereto as may be deemed right. Such demand to be no stay of proceedings.

90. A party pleading in answer to any pleading in which such document is mentioned or referred to, shall be at liberty to set out the whole, or such part, or the substance thereof, as may be material; and the matter so set out shall be deemed and taken to be part of the pleading in which it is set out. Documents set out in pleadings.

91. A plaintiff or defendant may aver performance of conditions precedent generally, and the opposite party shall not deny such averment generally, but shall specify the condition or conditions precedent the performance of which he intends to contest. Averment of performance and denial.

92. The general issue is abolished, and every pleading General issue abolished.

but in cases where the taxation is contested the same shall be final. The Supreme Court shall hear appeals from the court within the City of Halifax as elsewhere in all the provinces.

CHAP. 134. shall specify, particularly and concisely, the facts intended to be denied.

Rule to plead
and demand of
plea abolished.

93. The rule to plead, and the demand of plea shall be abolished, and the notice to plead, which may be endorsed on the writ, or declaration, or delivered separately, shall be alone retained.

Notice to plead,
&c.

94. With any amended declaration, plea, or subsequent pleading, delivered in any cause in term or vacation, a notice to the following effect may be endorsed: "Ten days are given to the plaintiff or defendant to plead, *reply*, &c. in the cause"; and thereupon, if the party thus notified shall neglect to file his plea, replication, rejoinder, or other pleadings, as the case may be, within ten days from the time of service of such notice, and to deliver a copy of the same to the opposite attorney, the party giving such notice shall, after the expiration of that time be at liberty, being plaintiff in the cause, to mark a default as for want of plea; or, being defendant, to sign judgment of *non pros*: provided, however, that the court or a judge may, upon application, grant further time to plead; and may also, upon proper cause alleged and verified, order such default or *non pros* to be set aside, upon such terms as shall be thought reasonable and just: and provided also, that the court or any judge thereof may, in such cases as require it, give a rule or order to plead, reply, &c., within any shorter period than ten days.

Several counts
for same cause
of action.

95. Two or more counts may be added for the same cause of action, and several pleas, replications and subsequent pleadings may be pleaded, but no costs shall be allowed for any count or other pleading which may appear to the judge unnecessary. The costs of all issues shall be borne by the party against whom they are found, and the jury shall be required to find the truth on each issue.

Costs.

Entry of contin-
nuances, &c.
abolished.

96. No entry of continuances, by way of imparlance, *curia advisari vult*, *vice-comes non misit breve*, or otherwise, shall be made upon any record or roll whatever, or in the pleadings; but in all cases in which a plea *puis darrein continuance* is now by law pleadable, the same defence may be pleaded with an allegation that the matter arose after the last pleading, or the issuing of the jury process, as the case may be.

How pleadable.

New defence
arising after
last pleading.

97. Any defence arising after the commencement of any action, shall be pleaded according to the fact, without any formal commencement or conclusion, and any plea which does not state whether the defence therein set up arose before or after action, shall be deemed to be a plea of matter arising before action.

Ejectment and
trespass quare
clausum fregit,
description.

98. In ejectment and in trespass *quare clausum fregit*, the property shall be described by metes and bounds, or other certain designation.

99. In any action for trespass to a person or property, the defendant shall be entitled to particulars, identifying the cause of action for which the plaintiff is proceeding, and the plaintiff to particulars of any justification pleaded by the defendant, and the judge may order plans of the place in question to be exchanged between the parties. CHAP. 134.
Trespass, defendants may demand particulars.

100. No new assignment shall be pleaded unless by leave of the court or a judge. New assignment.

101. No plea which has already been pleaded to the declaration, shall be pleaded to a new assignment, except a plea in denial, unless by leave of the court or a judge, and such leave shall only be granted upon satisfactory proof that the repetition of such plea is essential to a trial on the merits. Plea.

102. In actions of libel and slander, the plaintiff may aver that the words or matter complained of, were used in a defamatory sense, specifying such defamatory sense, without any prefatory averments to shew how such words or matter were used in that sense, and such averments shall be put in issue by the denial of the alleged slander or libel; and where the words or matter set forth, with or without the alleged meaning, shew a cause of action, the declaration shall be sufficient. Libel and slander.
Averments.

103. In actions of slander, the precise words need not be proved as stated—provided the defamatory matter itself shall be substantially proved, nor shall it be necessary to aver, or prove special damage, where it shall appear that the words were defamatory, and were spoken falsely and maliciously. Slander.
Proof.

104. In all personal actions, except actions for malicious arrest or prosecution, criminal conversation, or debauching the plaintiff's daughter or servant, the defendant, or the plaintiff in replevin in cases where an avowry is pleaded, may pay into court a sum of money, by way of compensation or amends, without any rule or judge's order for that purpose, except in the case of one or more of several defendants, when such leave must be obtained, and may be granted, on such terms as the court or a judge may think fit. Compensation or amends in personal actions.

105. When money is paid into court, such payment shall be pleaded in all cases, and in any stage of the cause, as near as may be in the following form: Payment of money into court to be pleaded.

The defendant, by ———, his attorney, [*or in person,*] [*if pleaded to part, say as to \$——, parcel of the money claimed,*] brings into court the sum of \$——, and says that the said sum is enough to satisfy the claim of the plaintiff, in respect of the matter herein pleaded to.

106. When money is paid into court, the same shall be paid to the proper officer, who shall give a receipt for the amount in the margin of the plea, and the same shall be paid out to the plaintiff or his attorney on demand. How paid in and received out.

CHAP. 134.

Replication to
such plea.

107. The plaintiff after delivery of a plea of payment of money into court, shall be at liberty to reply to the same by accepting the sum so paid into court, in full satisfaction and discharge of the cause of action in respect of which it has been paid in, and he shall be at liberty in that case to tax his costs of suit; and in case of non-payment thereof, within twenty-four hours, to sign judgment for his costs of suit so taxed; or the plaintiff may reply that the sum paid into court is not enough to satisfy the claim of the plaintiff in respect of the matter to which the plea is pleaded; and in the event of an issue thereon being found for the defendant, the defendant shall be entitled to his judgment and costs; and if the plaintiff shall not, within thirty days after service of plea, reply that the sum is not sufficient, he shall be held to have accepted payment in full satisfaction of the plaintiff's claims.

Time to plead.

108. No rule or order for further time to plead shall be granted, unless the grounds of such application be disclosed by affidavit; and it shall then rest with the court or a judge, in their discretion, to grant such rule under the special circumstances of each particular case; but the prothonotary in any county, upon affidavit that the defendant has a good defence upon the merits, and that time is required to put in pleas, and that the application is not merely for delay, may grant an order for further time to plead not exceeding ten days, and not to extend beyond the first day of the term or sittings for which notice of trial may have been given.

Prothonotary
may grant order
for further
time.

Filing plead-
ings.

109. It shall be imperative on the party, plaintiff or defendant, to deliver to the opposite party, or his attorney, as well as to file, all pleadings within the time limited therefor.

All pleadings to
be signed;
counsel's signa-
ture unneces-
sary.

110. It shall not be necessary to have a counsel's signature to any pleading, but all pleadings shall be signed with the name of the party or his attorney.

Plea, not to be
waived without
leave.

111. The defendant shall not be at liberty to waive his plea without leave of the court or a judge, and on such reasonable terms as they shall approve.

Set off, mutual
debts.

112. Wherever there are mutual debts in the same right, one debt may be set off against the other, although such debts may be deemed in law to be of a different nature.

Pleas in bar, &c.
formal parts
abolished.

113. In a plea or subsequent pleading, intended to be pleaded in bar to the whole action generally, it shall not be necessary to use any allegation of *actionem non*, or to the like effect, or any prayer of judgment, nor shall it be necessary, in any replication or subsequent pleading intended to be pleaded in maintenance of the whole action, to use any allegation of *precludi non*, or to the like effect, or any prayer of judgment; and all pleas, replica-

tions and subsequent pleadings, pleaded without such formal parts, shall be taken, unless otherwise expressed, as pleaded respectively in bar or in maintenance of the whole action—provided that nothing herein contained shall extend to cases where an estoppel is pleaded. CHAP. 134.

114. No formal defence shall be required in a plea, and it shall commence as follows: The defendant by ———, his attorney, [*or in person,*] says that ———. Proviso.
Formal defence unnecessary.

115. It shall not be necessary to state in a second or other plea, or avowry, or cognizance, that it is pleaded by leave of the court, or according to the form of the statute, or to that effect, nor shall such leave be required. Second and other pleas to be pleaded without leave.

116. Where there are two or more counts substantially for the same cause of action, or two or more pleas raising substantially the same defence to the same cause of action, the defendant or plaintiff may, on suggesting the fact in his plea or replication, plead a single plea or replication to such counts or pleas, and when the opposite party insists that the cause of action or defence is not the same, he may apply to the court or a judge, who may set aside the plea or replication on such terms, or make such other order as shall appear to be right or just. One plea or replication to several counts or pleas allowable.

117. In all actions by and against the assignees of a bankrupt or insolvent, or executors or administrators, or persons authorized by act of parliament to sue or be sued as nominal parties, the character in which the plaintiff or defendant is stated on the record to sue or be sued, shall not in any case be considered as in issue, unless specially denied. Bankrupts or insolvents, actions against.

118. The plaintiff may discontinue at any time by filing either a discontinuance or a rule therefor, and thereupon the defendant may at once tax his costs of defence and enter judgment therefor. Discontinuance.

119. Different causes of action, of whatever kind, except local causes arising in different counties, may be joined in the same suit, provided they be by and against the same parties and in the same rights; but the court or a judge shall have power to prevent the trial of different causes of action together, if such trial would, in their judgment, be inexpedient, and in such case may order separate issues to be made up and separate trials to be had. Different causes of action may be joined.

120. All notices given in the progress of or preparatory to a cause, between the attornies, shall be received in evidence on an affidavit of the service thereof made by the attorney or his clerks, specifying the time and mode of such service. Notices received in evidence.

VIEW.

121. View by jury is abolished, unless the judge on the trial shall think the same advisable, in which case the whole jury shall, after being sworn, view the premises, and View.

CHAP. 134. the judge may, in such case, for the purpose of the view, postpone further proceedings in the trial until such view can be had, but such postponement shall not be made for so long a time as to prevent the trial at the same term or sittings.

EXECUTION.

Execution; return.

122. Writs of execution shall be as near as may be, in the form heretofore used, and shall be made returnable, either in sixty days, or to the first day of the next succeeding term, and may be directed as writs of summons, or to the sheriff of any particular county; but in no case shall an execution be returnable within less than sixty days.

To be executed according to direction endorsed.

123. It shall be competent for the party suing out the writ, to direct by endorsement in what manner it is to be executed, which direction the officer shall obey, and the party shall in all cases specify upon the face of the writ, or by endorsement, for what amount it is to be levied.

When issuable.

124. No execution shall issue on a judgment until the bill of costs and record, or in a summary cause the bill of costs only, be filed.

Against M. P. P.

125. When any member of the provincial parliament, being taken under execution, shall be released by reason of his privilege, he may be taken under a new writ after the expiration of such privilege.

Coin.

126. Current gold and silver coin may be taken in execution, and may be paid to the creditor as money collected. Provincial debentures and notes and bank notes, and all bills or evidences of debt issued by any corporation, and circulated as money, may be taken in execution, and paid to the creditor at their par value as money collected, if he will accept them, otherwise they shall be sold as other chattels.

Bank notes and securities.

Sheriff to make special return on executions.

127. The sheriff shall in returning every execution state specially his doings thereunder, and where property has been taken give a specific account thereof, and of the sales of the same, with an account of his fees and charges against the same.

Property exempted.

128. The necessary wearing apparel and bedding of the debtor and his family, and the tools or instruments of his trade or calling, and his last cow, shall be exempted from execution.

Execution to bind goods from delivery to sheriff.

129. No writ of execution shall bind the goods of the defendant but from the time the writ shall be delivered to the sheriff to be executed; and the sheriff shall, upon the receipt of the writ endorse thereon the time at which the same was received by him.

Interest on judgments.

130. Judgments hereafter to be taken, shall, in all cases, bear interest, and the same may be levied for under execution.

Discharge from custody.

131. A written order, under the hand of the attorney in the cause by whom any writ of execution shall have

been issued, shall justify the sheriff, jailor, or party in whose custody the party may be under such writ, in discharging such party, unless the party for whom such attorney professes to act shall have given written notice to the contrary, to such sheriff, jailor, or person in whose custody the opposite party may be; but such discharge shall not be a satisfaction of the debt, unless made by the authority of the creditor; and nothing herein contained shall justify any attorney in giving such order for discharge without the consent of his client. CHAP. 134.

132. All satisfaction pieces shall be signed by the plaintiff or his personal representatives, or by the attorney entering the judgment. The satisfaction piece may be in the form following: Satisfaction pieces, how signed.
Form.

In the supreme court, ———, 18—.

Satisfaction is acknowledged between ——— plaintiff, and ——— defendant, for ——— and ——— costs.

Judgment entered on the ——— day of ———, in the year of our Lord one thousand eight hundred and ———.

SCIRE FACIAS.

133. During the lives of the parties to a judgment, or those of them during whose lives execution may at present issue within a year and a day without a *scire facias*, execution may issue without a revival of the judgment, at any time within six years after the judgment. Execution may issue within six years without revival.

134. In cases where it becomes necessary, by reason either of the lapse of time, or of a change by death, or otherwise, of the party entitled or liable to execution, the party alleging himself entitled to execution, shall be allowed either to sue out a writ in the nature of a *scire facias*, to be called a writ of revivor, according to the form set forth in appendix A, number 11, or to apply to the court or a judge for leave to enter a suggestion to the effect that it manifestly appears to the court, that he is entitled to execution of the judgment, and to issue execution thereupon; such leave to be granted by the court or a judge, upon a rule to show cause, or a summons to be served as at present, or in such other manner as may be directed by such court or a judge, which rule or summons may be in the form given in appendix A, number 12; and upon such application, in case it manifestly appears that the party making the same is entitled to execution, the court or a judge shall allow such suggestion to be entered in the form given in appendix A, number 13, and execution to issue, and order whether or not the costs of the application shall be paid by the applicant; and in case it does not manifestly so appear, shall discharge the rule, or dismiss the summons with or without costs, and the party applying shall, in such case, nevertheless, be at liberty to proceed by revivor or action, upon the judgment. Judgment, how revived.
Writ of revivor.
Suggestion.

CHAP. 134.

Proceedings to revive judgment when defendant out of province.

135. In cases where a party shall be desirous of reviving a judgment under the last section, and the defendant shall not be within the province, instead of the personal service of the writ of revivor, or of the rule or summons to shew cause why execution should not issue, it shall be in the power of the supreme court or a judge, on sufficient cause shewn to the satisfaction of such court or judge, to order publication or constructive service of the writ or rule to be made in such manner, and for such time as the court or judge shall think proper, and such publication or constructive service shall have the same effect as a personal service on the defendant.

AMENDMENT.

Court or judge may amend defects, &c.

136. The supreme court and every judge thereof, shall at all times have the power of amending all defects and errors in any proceedings in civil causes, whether there be anything in writing to amend by or not, and whether the defect or error be that of the party or not, and all such amendments may be made with or without costs, as to the court or a judge shall seem fit; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties, shall be made.

Party dissatisfied with amendment.

137. The party against whom such amendment shall be made, if dissatisfied therewith, may apply to the court for a new trial on that ground, and the court shall thereupon make such order as to a new trial, and the terms on which such new trial shall be granted, or such other orders as they may deem reasonable.

Amendment at trial, power of judge.

138. In all such cases the judge, instead of causing the writ, pleadings, issue roll, or document to be amended, may direct the jury to find the facts according to the evidence, and such finding shall be stated on the writ, issue roll, or document; and if the judge shall deem such defect or error immaterial to the merits of the case, and the misstatements such as could not have prejudiced the opposite party, he shall give judgment according to the justice of the case.

EJECTMENT.

Commencement of action; proceedings in assimilated to other actions; judgment by default.

139. Actions of ejectment shall be commenced by writ of summons against all persons in possession of the property claimed, and shall in all cases be conducted as other actions, and damages may be given for the plaintiff on trial, and on judgment by default the plaintiff shall be entitled to costs, and the damages may be assessed, or form the subject of a separate suit, at the plaintiff's option.

Description of property and of parties.

140. The writ shall describe the property claimed with reasonable certainty. It shall also state the names of all the persons in whom the title is alleged to be, and there

shall be thereon endorsed, a notice, that if the defendant do not appear and defend the property sued for, or such part thereof as he may think fit, within the time specified in such notice, the plaintiff will be at liberty to sign judgment at the expiration of such time, and that the defendant may thereupon be turned out of possession. The writ shall be served in the same manner as other writs, or in such manner as the court or a judge shall order, under any peculiar circumstances; and in case of vacant possession, the fact of such vacant possession to be determined by the court or a judge, by posting up a copy thereof upon the door of the dwelling house, or other conspicuous part of the property.

CHAP. 134.

Notice to appear.

Service of writ.

Vacant possession.

141. The following forms in ejectment shall be used, viz.: the writ appendix A, number 14, the notice endorsed on writ appendix A, number 15; judgment for non-appearance appendix A, number 16; judgment for plaintiff after appearance and plea, appendix A, number 17; and where other forms are requisite, they shall be assimilated to the above.

Forms.

142. Any person shall be permitted to appear, on filing an affidavit that he is in possession of the land, either by himself or his tenant, or who would now be entitled to appear, but the court or a judge shall have power to strike out or confine defences, set up by persons not so entitled.

Who may appear.

143. A plea not confining the defence to a part of the premises, shall be considered a defence to the whole.

Plea, when considered defence to whole.

144. Any person appearing, shall be at liberty to limit his defence by plea to a part only of the property mentioned in the writ, describing that part with reasonable certainty.

Defence may be limited to part of property.

145. The plea shall be confined to a denial in whole or in part of the plaintiff's right to the possession claimed, or to a right of possession in himself with the plaintiff as tenant in common with the plaintiff, or to a denial that he was in possession of the whole or any part of the premises at the time of action brought, and is not withholding the same. The forms shall be those in appendix A, numbers 18, 19 and 20.

Plea; substance of; forms.

146. Want of reasonable certainty in the writ or plea shall not nullify it, but only be ground for application to the court or a judge, for better particulars to the land claimed or defended, which the court or a judge shall have power to give in all cases.

Plea; want of certainty in.

147. In case there be no appearance and plea within the time appointed, or if an appearance be entered but the defence limited to part only, the plaintiff shall be at liberty to sign judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

Mode of proceeding where part of property undefended.

148. In case an appearance and plea shall be entered, either for the whole or part of the premises claimed, the

Issue.

CHAP. 134.

Trial.

case shall be considered at issue, and the parties may proceed thereupon to trial as in other actions, and the question at the trial shall, except in the case hereinafter mentioned, be, whether the statement in the writ of the title of the claimant be true or false, in whole or in part, and if true, then which of the claimants, if more than one, is entitled; and also, whether he is entitled to any, and what damages for the wrongful withholding of the said premises.

Action for joint tenants, tenants in common, or coparceners.

149. In case of such an action being brought by some or one of the several persons entitled as joint tenants, tenants in common, or coparceners, any joint tenant, tenant in common, or coparcener in possession, may plead that he defends as such, and admits the right of the claimant to an individual share of the property, but denies any actual ouster of him from the property; and upon the trial of such an issue, the additional question of, whether an actual ouster has taken place, shall be tried as at present in an action of ejectment.

Where plaintiff's title expires before trial.

150. In case the title of the claimant shall appear to have existed as alleged in the writ, and at the time of service thereof, but it shall also appear to have expired before the time of trial, the claimant shall, notwithstanding, be entitled to a verdict according to the fact that he was so entitled at the time of bringing the action and serving the writ, and to a judgment for his costs of suit.

Non-appearance of either party at trial.

151. If the defendant appears, and the claimant does not appear at the trial, the claimant shall be non-suited; and if the claimant appears and the defendant does not appear, the claimant shall be entitled to recover as heretofore, without any proof of his title.

Execution.

152. Upon any judgment in ejectment for the recovery of possession and costs, there may be either one writ, or separate writs of execution for the recovery of possession and for costs, at the election of the claimants.

Death of either party.

153. The death of a claimant or defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned.

Death of one of several claimants.

154. In case the right of a deceased claimant shall survive to another claimant, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving claimant; and if such a suggestion shall be made before the trial, then the claimant shall have a verdict, and recover such judgment as aforesaid, upon its appearing that he was entitled to bring the action either separately or jointly with the deceased claimant.

Where right does not survive to other claimants.

155. In case of the death before trial, of one of several claimants whose right does not survive to another or others of the claimants, where the legal representative of the deceased claimant shall not become a party to the suit

in manner hereinafter mentioned, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving claimant, for such share of the property as he is entitled to, and costs. CHAP. 134.

156. In case of a verdict for two or more claimants, if one of such claimants die before execution executed, the other claimant may, whether the legal right to the property shall survive or not, suggest the death in manner aforesaid, and proceed to judgment and execution for the recovery of possession of the entirety of the property and costs; but nothing herein contained shall affect the right of the legal representative of the deceased claimant, or the liability of the surviving claimant to such legal representative; and the entry and possession of such surviving claimant, under such execution, shall be considered as an entry and possession on behalf of such legal representative, in respect of the share of the property to which he shall be entitled as such representative, and the court may direct possession to be delivered accordingly. After verdict and before execution.

157. In case of the death of a sole claimant, or before trial of one of several claimants, whose right does not survive to another or others of the claimants, the legal representative of such claimant, may, by leave of the court or a judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed; and if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased claimant, and such judgment shall follow upon the verdict in favor of, or against the person making such suggestion as hereinbefore provided, with reference to a judgment for or against such claimant; and in case such suggestion in the case of a sole claimant be made after trial, and before execution executed by delivery of possession thereupon, and such suggestion be denied by the defendant within twelve days after notice thereof, or such further time as the court or a judge may allow, then such suggestion shall be tried, and if, upon a trial therefor, a verdict shall pass for the person making such suggestion, he shall be entitled to such judgment as aforesaid, for the recovery of possession and for the costs of and occasioned by such suggestion; and in case of a verdict for the defendant, such defendant shall be entitled to such judgment as aforesaid for costs. Of sole claimant, or of one of several claimants before trial.

158. In case of the death before or after judgment of one of several defendants in ejectment, who defend jointly, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the action may proceed against the surviving defendant to judgment and execution. Of a joint defendant.

CHAP. 134.

Of a sole defendant, or all the defendants,

159. In case of the death of a sole defendant, or of all the defendants in ejectment, before trial, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue; and the claimants shall be entitled to judgment for recovery of possession of the property, unless some other person shall appear and defend, within the time to be appointed for that purpose by the order of the court or a judge, to be made upon the application of the claimants; and it shall be lawful for the court or a judge, upon such suggestion being made, and upon such application as aforesaid, to order that the claimants shall be at liberty to sign judgment within such time as the court or a judge may think fit, unless the person then in possession, by himself or his tenants, or by the legal representative of the deceased defendant, shall, within such time, appear and defend the action, and such order may be served in the same manner as the writ; and in case such person shall appear and defend the same, proceedings may be taken against such new defendant, as if he had originally appeared and defended the action; and if no appearance be entered, and defence made, then the claimant shall be at liberty to sign judgment pursuant to the order.

After verdict.

160. In case of the death of a sole defendant, or of all the defendants in ejectment, after verdict, the claimants shall, nevertheless, be entitled to judgment as if no such death had taken place, and to proceed by execution for recovery of possession, without suggestion or revivor, and to proceed for the recovery of the costs in like manner as upon any other judgment for money against the legal representative of the deceased defendant or defendants.

Of one of several defendants before trial defending for portion of premises.

161. In case of the death, before trial, of one of several defendants in ejectment, who defends, separately, for a portion of the property for which the other defendant or defendants do not defend, the same proceedings may be taken as to such portion as in the case of the death of a sole defendant; or the claimants may proceed against the surviving defendants, in respect of the portion of the property for which they defend.

Ditto, where surviving defendants make defence.

162. In case of the death, before trial, of one of several defendants in ejectment, who defends, separately, in respect of property for which surviving defendants also defend, it shall be lawful for the court or a judge, at any time before the trial, to allow the person at the time of the death in possession of the property, or the legal representative of the deceased defendant, to appear and defend on such terms as may appear reasonable and just, upon the application of such person or representative; and if no such application be made, or leave granted, the claimant suggesting the death in manner aforesaid, may proceed against the surviving defendant or defendants to judgment and execution.

163. The claimant in ejectment shall be at liberty at any time to discontinue the action, as to one or more of the defendants, by filing a discontinuance or rule therefor, as against such defendant or defendants, and giving notice thereof in writing to the defendant or defendants as against whom the action is discontinued, and thereupon the defendant to whom such notice is given, shall be entitled to tax his costs of defence, and have execution therefor.

CHAP. 134.

Discontinuance as to one or more defendants.

164. In case one of several claimants shall be desirous to discontinue, he may apply to the court or a judge to have his name struck out of the proceedings, and an order may be made thereupon, on such terms as to the court or a judge may seem fit, and the action shall thereupon proceed at the suit of the other claimants.

By one of several claimants.

165. A sole defendant, or all the defendants in ejectment, shall be at liberty to confess the action, as to the whole or part of the property, by giving to such claimant a notice headed in the court and cause, and signed by the defendant or defendants; such signatures to be attested by his or their attorney, and thereupon the claimant shall be entitled to, and may forthwith sign judgment and issue execution for the recovery of possession and costs.

Defendants may confess as to part of property.

166. In case one of several defendants in ejectment, who defends separately for a portion of the property for which other defendants do not defend, shall be desirous of confessing the claimant's title to such portion, he may give a like notice to the claimant, and thereupon the claimant shall be entitled to, and may forthwith sign judgment and issue execution for, the recovery of such portion of the property, and for the costs occasioned by the defence relating to the same, and the action may proceed as to the residue.

Also, one of several defendants who defends separately for a part.

167. In case one of several defendants in ejectment, who defends separately in respect of property for which other defendants also defend, shall be desirous of confessing the claimant's title, he may give a like notice thereof; and thereupon the claimant shall be entitled to, and may sign judgment against such defendant for, the costs occasioned by his defence, and may proceed in the action against the other defendants to judgment and execution.

Also, one of a defendant who defends separately for a part.

168. The effect of a judgment in such an action, shall be the same as that of a judgment in the present action of ejectment.

Judgment, effect of.

169. The jury may find a special verdict.

Special verdict.

170. Upon finding for the claimants, judgment may be signed and execution issue, for the recovery of the possession, and for the damages awarded, and for the costs, as at present in the action of ejectment.

Verdict for claimants; execution.

171. If any person shall bring an action of ejectment, after a prior action of ejectment for the same premises has been, or shall have been, unsuccessfully brought by such

In ejectment, security for costs in second action.

CHAP. 134. person, or by any person through or under whom he claims, against the same defendant, or against any person through or under whom he defends, the court or a judge may, if they or he think fit, on the application of the defendant, at any time after such defendant has appeared to the writ, order that the plaintiff shall give to the defendant security for the payment of the defendant's costs, and that all further proceedings in the cause shall be stayed until such security be given, whether the prior action has been or shall have been disposed of by discontinuance, by non-suit, or by judgment for the defendant.

For defendants.

172. Upon finding for defendants, or any of them, judgment may be signed and execution issue, for costs against the claimants named in the writ.

Jurisdiction of court and judges in action.

173. The court and the judges thereof may exercise over the proceedings in the action, the same jurisdiction which is at present exercised in the action of ejectment, so as to insure a trial of the title, and of actual ouster when necessary.

REPLEVIN.

Replevin may be brought for unlawful taking or detention.

174. Replevin may be brought for an unlawful taking, or for an unlawful detention whether the original taking may have been lawful or not.

Affidavit to be filed.

175. No writ of replevin, except where the property sought to be replevied has been distrained for rent or damage feasant, shall issue, unless the party applying therefor, or his agent, shall file an affidavit in the form in appendix A, number 21, setting forth that he, or in case of an agent, his principal, has the right to the possession of the property contained in the writ, as he verily believes, and that it is unjustly withheld from him.

Security to sheriff.

176. In all cases of replevin, the plaintiff or his agent shall give security to the sheriff, in the form in appendix A, number 22.

Defendant may retain possession.

177. Notwithstanding the issue of a writ of replevin, the defendant or his agent, except in cases of distress for rent or damage feasant, shall have the right to retain possession of the property contained therein, if he shall give security to the sheriff in the form in appendix A, number 23; such security, given either by the plaintiff or defendant, shall be assigned, on request, to the party entitled to the benefit thereof, by the sheriff endorsing his name thereon, which endorsement shall be sufficient to enable such party to bring action thereon in his own name, against the several parties who have executed such security.

Damages may be awarded to either party.

178. In actions of replevin, the jury shall be at liberty to award damages to either party in the suit.

BAIL.

Bail to sheriff to be bail to action; rendering defendant.

179. Bail to the sheriff shall continue bail to the action, and shall have the power of rendering the defendant

whenever they shall see fit to do so. The bail bond to be in the form in appendix A, number 24. CHAP. 134.

180. A party who has given bail to the sheriff, which bail has justified when required to do so, may appear and defend the action without filing special bail. Party having given bail may defend without filing special bail.

181. The bail to the sheriff may be called upon to justify, on the return of the writ, and the sheriff shall be liable for taking insufficient bail, but he may relieve himself at any time before judgment by causing the defendant to be rendered, and upon payment of all costs which may have been incurred by the plaintiff in consequence of such bail being insufficient. Bail, when to justify; sheriff's liability.

182. The sheriff shall return the bail bond with the *capias* to the court where the writ is returnable, with an assignment thereon to the plaintiff, which assignment may be made by the sheriff endorsing his name thereon, and the same shall be sufficient to enable the plaintiff to bring action thereon in his own name against the several parties who have executed the same. Sheriff's return.

183. In all cases where the writs of execution against the defendant in any action is returned *non est inventus*, and an action is prosecuted against his bail upon their bond, they shall be allowed to render their principal in discharge thereof at any time before the time for pleading has elapsed, if they pay to the plaintiff the costs which have been incurred in the action against them upon their bond. Return non est inventus.
Time for render in discharge for bail.

184. When the bail live above twenty miles from the place where the action is brought, or where the bail live within that distance, but the court shall not be in session, they may justify before a judge or a commissioner, by affidavit, and the judge or commissioner may examine the sureties upon oath, touching the value of their respective estates. Justification where bail reside at a distance, or court not in session.

MISCELLANEOUS.

185. All distinction of suing and being sued, as an attorney, shall be abolished. Distinction of suing as attorney, &c., abolished.

186. A notice of trial, endorsed on a writ of summons, shall be sufficient, if served the same number of days required for the defendant's appearance in the suit before the term or sittings mentioned in such notice; and in continued cases, where the defendant resides within the county (except in the island of Cape Breton) in which the action is brought, the notice shall be served at least twenty days, if in any other county, at least thirty days, and if the defendant resides in Cape Breton and the action is brought in any county not in the island, or if the defendant resides out of Cape Breton and the action is brought within any county in the island, at least forty days, before the first day of the term or the sittings thereafter, and Notice of trial.

CHAP. 134. if the plaintiff shall not proceed to trial pursuant to such notice, he shall be liable to pay to the defendant the costs of not proceeding to trial, unless he can shew good cause to the contrary, or shall have given to the defendant, or his attorney in case he has appeared, notice of countermand of such trial at least four days, or in case the defendant resides in Cape Breton and the action is brought in any county not in the island, or the action is brought in any county within the island and the defendant resides out of the island, at least fourteen days, before the first day of the term or the sittings thereafter, but the plaintiff shall, notwithstanding such countermand, pay all the costs which the defendant has actually been put to prior to such notice of countermand, in consequence of the notice of trial.

Notice of countermand.

Rules for making up the docket.

187. In making up the docket of civil causes for trial, the prothonotary shall be guided by the following rules: 1st, All summary and appeal causes shall have precedence, except when ordered to be tried by a jury, and then they shall be entered on the docket, according to seniority, as declaration causes; such seniority in appeal causes to bear relation to the issuing of the original writ. 2nd, When writs are filed on the same day, priority shall be regulated by the issue of the respective writs.

Jury cause when to be set down.

188. At Halifax, the lists of all jury causes for trial shall be given in to the prothonotary, on or before the Tuesday preceding the first day of the sittings at which such causes are to be tried.

Docket when to be called in Halifax.

189. At Halifax, the docket of jury causes for trial shall be called on the first day of each sittings at or shortly after the opening of the court, and the plaintiff's attorney or counsel, when a cause is so called, shall be required to state whether he intends to try the same at such sittings, and in default of such statement the cause shall be struck off the docket; and the attorney or counsel of the defendant shall in like manner be required to state whether he intends defending the same, and in default of such statement the cause shall be struck off the docket, and judgment, whether interlocutory or otherwise, may be entered up for the plaintiff, and further proceedings had as if no plea had been filed; but the court or a judge upon due cause shewn, and upon such terms as may be thought proper, may order any cause to be again placed on the docket for trial as if it had not been called.

Attorney or counsel to state whether cause for trial; whether to be defended.

Docket to be called but once.

190. The docket of causes for trial shall be called but once, both at the sittings in Halifax and on the circuit.

When to be called on the circuit.

191. On circuit, the docket of new as well as of continued causes, shall be called on the first day of the term, at or shortly after the opening of the court, and the plaintiff's attorney or counsel, when the cause is called, shall state whether he intends to try the same that term, and in default of such statement the cause shall stand continued,

Statement of attorney or counsel.

and the defendant shall, if the plaintiff signifies his intention to try the same that term, be required to state whether he intends defending the same, and in default of such statement plaintiff shall have a judgment. CHAP. 134.

192. No rule shall be granted for the continuance of a cause upon the ground of the absence of a material witness, unless the affidavit upon which the rule is applied for shall, in addition to the usual grounds, distinctly state that the party so applying has a just defence upon the merits of the case, and that the application is not made solely for delay, but to enable the applicant to substantiate his defence.

Absence of a material witness.

193. The prothonotary may tax costs, and enter, sign, and date in the judgment book for the county wherein he resides, in the usual form, judgments in undefended cases, brought for the recovery of a debt, by confession or on default, where particulars are annexed to the writ, except in cases of foreclosure of mortgages, which shall be as valid as if signed by a judge; but such taxation and judgment, or either of them, may be reviewed and set aside within twelve months by the court or a judge. If the costs be reduced on taxation the prothonotary shall minute such reduction on the margin of the docket, and the amount shall be deducted in the order for levy on the execution; and in case of any deduction being made from the amount of an attorney's bill, the costs of the review and retaxation shall be borne by the attorney whose bill has been so reduced.

Cases in which prothonotaries may tax costs and enter judgments.

May be reviewed.

Proceedings if costs reduced.

Attorney liable.

194. The court will hear one counsel only on each side, upon any motion arising during the trial of a cause; and if cases be cited in opposition to such motion, one counsel will be heard in reply.

Motions arising during trial; but one counsel on each side heard.

195. Upon the trial of any cause, civil or criminal, the addresses to the jury shall be regulated as follows:—The party who begins, or his counsel, shall be allowed in the event of his opponent not announcing at the close of the case of the party who begins, his intention to adduce evidence, to address the jury a second time at the close of such case, for the purpose of summing up the evidence; and the party on the other side, or his counsel, shall be allowed to open the case, and also to sum up the evidence, if any; and the right to reply shall be the same as at present.

Address to jury.

196. It shall be lawful for the presiding judge at the trial of any cause, where he may deem it right for the purposes of justice, to order an adjournment for such time during the same term or sittings, or to the next term or sittings, and subject to such rules and conditions as to costs or otherwise as he may think fit.

Judge may adjourn trial.

197. When the judge shall refuse to grant a rule nisi for a new trial, in a cause tried before him, and the counsel

New trial, when rule for refused by judge.

CHAP. 134. for the party shall, on or before the last day of the term, or the sittings after term, in which the cause has been tried, file sufficient bail in such reasonable amount as the judge shall direct, to respond the judgment to be finally given in the cause, no judgment shall be entered up, but a rule nisi specifying the objections, shall pass, under which the party shall be at liberty to enter the case, and it shall stand for argument in the same manner as if the rule nisi had been granted by the judge presiding at the trial.

No new trial if evidence sufficient.

198. No new trial shall be granted on account of evidence having been improperly received on any trial, if in the judgment of the court there be other evidence sufficient to sustain the verdict.

New matter in affidavits may be answered.

199. Upon motions founded upon affidavits, it shall be lawful for either party, with leave of the court or a judge, to make affidavits in answer to the affidavits of the opposite party, upon any new matter arising out of such affidavits, subject to all such rules as may hereafter be made respecting such affidavits.

Costs, on judgment.

200. The party in whose favor a judgment shall be given, shall be entitled to recover from the opposite party his taxable costs.

Where less than \$8 recovered.

201. If the plaintiff in any action, not brought upon contract, express or implied, and heretofore deemed an action of trespass or trespass on the case, or in any action for breach of promise of marriage, shall recover less damages than the sum of eight dollars on the trial of any issue, or on enquiry on default, he shall not recover any costs, unless the judge before whom the issue is tried or the assessment of damages made, shall certify that the action was brought to try a right besides the mere right to recover damages for the trespass or grievance for which the action was brought, or that the trespass or grievance was wilful and malicious, or that the action was not frivolous and vexatious, and that the plaintiff had actually sustained damage to the amount recovered, and had by notice in writing demanded compensation therefor eight days before action brought; but nothing in this section shall be construed to deprive any plaintiff of his costs in any action for trespass on any lands, or for entering into any tenement in respect of which any notice not to trespass thereon shall have been previously served on or left at the last place of abode of the defendant, by or on behalf of the owner or occupier.

Defendant's costs, when plaintiff does not proceed.

202. Any one of several defendants shall be entitled to his taxable costs when the plaintiff shall not prosecute his suit to final judgment against him, and also in cases where, upon the trial of the issue, a verdict shall pass in his favor, unless in case of a trial the judge before whom a trial was had shall certify that there was reasonable cause for making him a party to the action.

203. In any action against an acceptor of a bill of exchange, or the maker of a promissory note, the defendant shall be at liberty to stay proceedings on payment of the debt and costs in that action only. CHAP. 134.

Stay of proceedings on payment.

204. On the taxation of costs, as between attorney and client, no costs shall be allowed to the attorney in respect of any excess of length in any pleading; and in case any such costs shall be payable by the plaintiff to the defendant on account of such excess, the amount thereof shall be deducted from the attorney's bill.

Costs as between attorney and client.

Excessive length of pleadings.

205. If a new trial be granted without any mention of costs in the rule, the costs of the first trial shall not be allowed to the successful party, though he shall succeed in the second, unless the court shall otherwise order. When a new trial is granted on the ground of misdirection, or that the verdict was against evidence, the costs of the first trial shall abide the event, unless the court shall otherwise order.

Costs of new trial.

206. An application to compel the plaintiff to give security for costs must in ordinary cases be made before issue joined.

Security for costs.

207. Prothonotaries shall have power to grant orders for the stay of proceedings in a cause until security for costs be filed, upon sufficient grounds laid by affidavit in the same way such orders are now granted by the supreme court or a judge; but any party dissatisfied with a prothonotary's decision may, at any time within twelve days thereafter, apply to the supreme court, upon motion, or a judge at chambers, by summons upon affidavit, for a re-hearing; a plea filed in the meantime, or other proceedings taken on the part of the plaintiff or defendant, shall not prejudice the party claiming a re-hearing.

Security for costs, how obtained, &c.

208. Where the plaintiff shall fail to give security for costs within twelve months after service upon him or his attorney of a rule or order therefor, he shall be deemed out of court.

If not given.

209. On all rules made absolute, or discharged, and on all rules opposed in the first instance, the costs shall be allowed to the successful party, unless the court shall otherwise direct.

Costs on rules.

210. The costs attending the issuing of any commission, and of taking depositions thereunder when used on trial, shall be costs in the cause.

Costs of commissions; depositions.

211. The costs of every rule or order for the examination of witnesses *de bene esse*, shall be costs in the cause, unless otherwise directed.

Costs of examination de bene esse.

212. The prothonotary shall examine and compare all bills of costs, that they contain no other or greater fees than are allowed by law, and before any such bill shall be charged against the plaintiff or defendant, it shall be allowed and signed by a judge.

Taxation of costs.

CHAP. 134.

Costs to be filed
and when.

213. All bills of costs when taxed shall be filed among the bills of costs for the term, and every bill of costs taxed on any rule or proceeding in a country cause argued at Halifax, shall be filed immediately after taxation at Halifax, otherwise no execution shall issue for enforcing payment of such costs.

Notice of taxation; vouchers.

214. Before taxation of costs accruing in Halifax, one day's notice shall be given to the opposite party, his counsel or attorney in Halifax, and the bill, with all affidavits and papers substantiating the charges therein, shall be filed with the prothonotary previously to the giving of such notice, but notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his attorney or guardian.

Interlocutory costs.

215. When interlocutory costs shall be taxed against any party, execution may be issued for the recovery thereof.

Interest, allowance of by court or jury.

216. Upon all debts or sums certain, the jury, or the court, or a judge where there is no jury, may allow interest to the creditor, at a rate not exceeding legal interest, from the time the debt or sum became payable, if payable at a certain time, under a written instrument; or if payable otherwise, then from the time a demand of payment in writing, containing a notice that interest will be claimed from the date of the demand until payment shall have been made.

Damages in the nature of interest.

217. The jury or the court, or a judge where there is no jury, may give damages in the nature of interest over and above the value of the goods at the time of the conversion or seizure, and over and above the money recoverable in any action on policies of insurance.

Set-off exceeding plaintiff's claim

218. Where a set-off greater than the plaintiff's claim has been proved, judgment for the excess shall be given for the defendant.

Set-off of mutual debts.

219. Wherever there are mutual debts in the same right, one debt may be set-off against the other, although such debts may be deemed in law to be of a different nature, and where a set-off greater than the plaintiff's claim has been proved, judgment for the excess shall be given for the defendant.

When plaintiff had opportunity in a prior suit of setting off claim.

220. Whenever it shall appear that the plaintiff had an opportunity in a prior suit of setting off his claim, and shall not give a satisfactory reason for not having done so, he shall not be entitled to recover any costs, and it shall be in the discretion of the court to grant the defendant his costs against the plaintiff.

Judgment for not duly proceeding to trial.

221. Judgment may be ordered, as in case of a non-suit, for not duly proceeding to trial, and notice therefor may be given, notwithstanding a previous trial, or trials of the cause may have taken place.

Final judgment how entered up.

222. Final judgment may be signed by any judge, and the judge shall set down the date upon the docket, and the

prothonotary shall mark on the record the day it was filed. CHAP. 134.
but no marginal note shall be required thereon.

223. No judgment shall have relation to any other day Date of.
than the day on which it is signed.

224. The additions and place of residence of every person making affidavit, except the same is made in a cause by any of the parties thereto, shall be inserted therein. Affidavit, description of the deponent.

225. In all cases in which any particular number of days not expressed to be clear days, is prescribed by this or any other act regulating the practice, or by the rules or practice of the court, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last happen to fall on a Sunday, Christmas Day, Good Friday, or a day appointed a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also. Computation of time; Sunday. Christmas day, &c.

226. When a judge's order is made a rule of court, it shall be a part of the rule of court that the cost of making the order a rule of court shall be paid by the party against whom the order is made, provided an affidavit be made and filed that the order has been served on the party or his attorney, and disobeyed. Making judge's order a rule, costs of.

227. All causes for argument, whether upon demurrer, special verdicts, cases made, or rules nisi which have been granted, or causes in which the party has given bail to respond the judgment as hereinbefore provided, must be entered with the prothonotary at Halifax on or before the Tuesday preceding the first day of the term, and such entry shall be deemed notice to the opposite party to be prepared for the argument; and in case of such entry being omitted from neglect or other cause, judgment shall be entered against the party who ought to have made such entry, unless the court shall otherwise order. Causes for argument; entry of.

228. In all cases where rules nisi have been granted to set aside verdicts, or which may otherwise delay judgment, the party who has obtained the rule shall enter the cause for argument on the Tuesday preceding the term. Of rules nisi to set aside verdict.

229. The party against whom any rule nisi has been granted may enter the cause with the prothonotary, and in such case the cause shall be placed on the list prepared by the prothonotary for the court in the order in which it first presents itself under the rule, and shall not be entered a second time. Ditto.

230. The demurrer book, special verdict, case, judge's report and affidavits, or other papers upon which rules nisi have been granted, must be on file on the Tuesday before the first day of term at Halifax. Papers connected with argument, &c., to be filed.

231. No rule nisi for a new trial shall be argued at the commencement of the term at Halifax unless the judge's report of the facts proved or the points reserved shall have been filed on the Tuesday preceding the term, which either Rule nisi for new trial, when to be argued.

CHAP. 134. party requiring the same shall apply for to the judge, and the judge will deliver his report to the prothonotary, who will furnish copies thereof to the parties requiring the same; and as the argument will be confined to the facts therein stated, it shall be competent for either party, on notice to the adverse party, to apply to the judge to alter or amend the same by his original notes, or otherwise by the consent of the parties or on affidavit.

Rules nisi moved for first day of term at Halifax.

232. When rules nisi are moved for on the first day of the term at Halifax, the court, on sufficient grounds laid, may grant the same without hearing the other side.

Business of terms at Halifax.

233. On the first day of term at Halifax, the court will pronounce judgment, if prepared so to do, upon such cases as have been fully argued, after which they will hear motions which do not require to be entered for argument, in the order in which motions are now heard, beginning with the attorney general and proceeding through the bar according to priority.

Priority of counsel, how regulated.

234. The motions and other necessary business of the first day of term at Halifax having been disposed of, the remainder of that day and the subsequent days of the term shall be devoted to hearing arguments upon the cases duly entered with the prothonotary, in the following order: the first case upon the attorney general's list; secondly the first case upon the solicitor general's list; and so on through the whole bar, according to priority. After the first case upon the junior barrister's list has been heard, then the second case upon the attorney general's list, and so on until all the causes entered for argument have been heard; but causes entered for argument and continued over the term, shall in subsequent terms retain the places they originally occupied on the docket, and take priority of new causes. No *concilium* to be moved for upon demurrers, which will take their turn with other causes entered for argument.

Continued causes.

Demurrers, no concilium to be moved for.

Argument, how conducted.

235. The party who has obtained the rule nisi shall briefly bring under the notice of the court the grounds upon which the rule was granted. The opposite party shall then shew cause, and the party supporting the rule shall reply unless the court specially direct a different course, and the right of counsel to be heard on the argument of demurrers or cases, shall be the same as in ordinary arguments.

Copies of papers for judges on argument.

236. The attorneys in the several causes for argument must provide each of the judges with copies of all papers necessary to be perused by them before the argument commences.

Summons and order.

237. It shall not be necessary to issue more than one summons for attendance before a judge at chambers upon the same matter, and the party taking it out shall be enti-

tioned to an order, unless cause to the contrary be shewn, or the judge shall refuse the same. CHAP. 134.

238. When a judge has power to grant an order, he may in place thereof grant a rule nisi returnable in term, and the court in term may make a rule returnable at chambers. Rules nisi may be granted by one judge.

239. The prothonotary at Halifax shall keep a book, wherein may be entered any judgment given which appertains to the supreme court of any other county, which shall be signed in the usual manner; and the prothonotary shall forthwith transmit to the prothonotary of the court in which such judgment is required to be entered, a correct transcript of the docket of judgment, and the prothonotary to whom the same may be transmitted shall copy such judgment into the county judgment book, and file the transcript with the papers in the cause, and the entry so made from the transcript shall have the like effect as if the same had been signed by a judge in the judgment book into which it shall be so copied, and the postage on the transmitting of any such papers shall be taxed as costs in the cause. Judgment, entries of; prothonotary's duty; judgment book.

240. When cases shall have been fully argued, and the several judges who heard the argument have decided upon the judgment to be delivered and have reduced their opinion to writing, the judgment of the court may be pronounced by a judge at chambers, after the several opinions have been read. Judgment may be given at chambers.

241. In case hereafter of a verdict for a sum of money, in favor of a plaintiff or defendant, where final judgment is delayed by a rule nisi or other proceeding on the part of the opposite party, and judgment shall be ultimately given for the party recovering the verdict, such judgment shall be entered on the verdict with interest, unless the court or a judge shall otherwise order. Interest on verdict.

242. The judges in term at Halifax may, from time to time, make general rules for facilitating the practice of the court and the effectual execution of this chapter, but such rules shall not go into operation until they have been published in the royal gazette; and all rules made since the fourth day of April, 1853, are hereby confirmed. General rules.

243. In all cases not provided for in this chapter, the practice and proceedings of the court shall conform as nearly as may be to the practice and proceedings of the superior courts of common law in force previous to the first year of the reign of king William the fourth; and in all cases where the proceedings and practice of the superior courts of common law in England differ from each other, those of the court of queen's bench shall be followed. Practice in cases not provided.

244. Fees for the services mentioned in this chapter shall be as prescribed in the chapter of this series entitled "of costs and fees." Fees.

CHAP. 134.

Penalty for taking excessive fees.
How recovered.

Provision for judgments since September, 1851.

Warrants, &c., to be filed within ten days from date.

Defeazance to be written on warrant.

Prothonotary to keep a book of registry.

Fees.

Issue may be tried by judge.

245. Any person taking greater fees shall, for such offence, forfeit to the party aggrieved forty dollars, and also the amount of such excessive fees.

246. Actions for such forfeitures shall be brought in the county where the offence was committed, and within six months next after the date of such offence.

247. Judgments entered in the book of country judgments, since the first day of September, 1851, and the transcripts thereof entered in the county judgment books, and all other proceedings had under such judgments, shall have the same effect as if section 239 had been in force when such judgments had been entered, and as if the same had been entered, and such other proceedings been had thereunder.

248. Every warrant of attorney to confess judgment in any personal action, and every cognovit actionem in any such action, and every defeazance or condition to which such warrant or cognovit may be subject, shall within ten days from the date of such warrant or cognovit respectively, be filed in the office of the prothonotary of the county wherein the person giving such warrant or cognovit resides; and unless such warrant or cognovit, together with the defeazance or condition to which the same may be subject, shall be so filed, such warrant or cognovit shall be null and void to all intents and purposes whatsoever. Provided that every defeazance or condition above referred to shall be written on the same paper on which the warrant or cognovit is written, and in default thereof such defeazance or condition shall be void.

249. The prothonotary in each county shall keep a book wherein he shall cause to be fairly entered an alphabetical list of every warrant of attorney or cognovit actionem filed in his office under the provisions of the last section, containing the names, additions and descriptions of the respective defendants or persons giving such warrants of attorney or cognovits, and also the names, descriptions and additions of the plaintiffs or persons in whose favor the same shall have been given, together with the number and dates of the execution and filing of the same, and also all other particulars connected with such warrants or cognovits; which book, and every warrant or cognovit so filed, may be searched and viewed by any person during office hours on a fee of twenty cents for each search, and the prothonotary shall also be entitled to receive from the party filing each warrant or cognovit the sum of twenty cents for entering the same.

250. The parties to any cause now triable by jury may, by consent, in open court, or writing signed by them or their attorney or counsel, as the case may be, and at any time before trial, leave the decision of any issue of fact to the presiding judge, provided that the court, upon motion,

or the presiding judge shall, in their or his discretion, think fit to allow such trial; and such issue in fact may thereupon be tried and determined and damages assessed, where necessary, in open court, in term, or the sittings after the term, by the presiding judge, whose decision shall be of the same effect as the verdict of a jury; and the proceedings upon and after such trial, as to the power of the court or judge, the moving for a new trial, the evidence and otherwise, shall be the same as in the case of trial by jury. CHAP. 134.

251. A case entered into by real parties, plaintiffs and defendants, and signed by counsel, may be filed, entered, and argued, without any writ having issued, and judgment may be entered and execution issued thereon, as if the suit had been instituted in the usual way.

Cases, arguments &c.

252. It shall be the duty of an appellant in all cases, whether plaintiff or defendant, to enter the cause for trial or argument, and give notice of trial.

Appellant shall enter cause, and give notice.

253. The decisions and judgments of one judge or more at chambers shall in all cases be subject to appeal to the supreme court in term, security for the costs of such appeal being given by the party appealing to the satisfaction of the judge or judges, who shall have given the judgment, and within a time to be limited by him or them.

Decisions of judges at chambers subject to appeal.

254. Where any person is guilty of contempt for disobedience in vacation of a judge's order or of a rule of court, it shall be lawful in either case for a judge in vacation to enforce obedience to the order or rule by attachment or execution.

Contempt may be punished in vacation.

255. No action for the recovery of any debt shall be commenced in the supreme court, where the amount is less than twenty dollars.

No suit to be commenced in supreme court unless amount exceeds \$20.

256. All actions for the recovery of debts, under eighty dollars, shall be brought in a summary manner, and the presiding judge may determine the same, or order a trial by jury.

Debts under \$80 to be recovered in a summary manner; judge may order a trial by jury.

257. In appeal causes the appellant shall cause his appeal to be entered on the docket of summary causes, and in case he shall neglect to enter the same, the original judgment shall be affirmed, at the instance of the opposite party, with costs.

Appellants to enter appeal causes, or judgment may be affirmed for the opposite party.

258. In all causes brought up by appeal and contested, the court shall try the same anew.

Appeal causes to be tried anew.

259. In summary and appeal causes the application for a jury must be by affidavit to the court; and it shall be discretionary with the court to grant the same.

Application for a jury must be to the court upon affidavit.

260. In appeal causes where the original judgment is affirmed, the final judgment shall include the debt and costs below, with the further costs; and execution shall issue for such debt and costs, or for costs only, as the case may require. Where the original judgment is reversed

Judgment upon appeal, how given.

CHAP. 134. after the same has been enforced, the final judgment shall include the amount levied under the original judgment, together with the costs of the reversal.

Execution may issue against the appellant or the appeal bond put in suit.

Summary causes to be tried on the first day of the term except in Halifax.

List of causes when to be given to the prothonotary in Halifax; when to be tried.

All causes returnable at Halifax, and which can be heard in a summary way, may be tried by a judge at chambers.

Notice of trial.

In other counties may be tried during term in court or at chambers.

Parties subject to same penalties for not appearing, &c., as if tried in court, and judge to have same control.

Court may regulate practice.

Appeals.

Loss of bill of exchange, &c.

261. In appeal cases the respondent may take out execution against the appellant, or have recourse to the appeal bond.

262. In future the summary causes, in all the counties except Halifax, shall be brought to trial and heard on the first day of the term, and the jury causes taken up immediately afterwards.

263. The list of summary causes for trial at Halifax shall be hereafter given in to the prothonotary on the preceding Tuesday of each sittings, and the causes shall be set down and tried on the following Tuesday, being the first day of such sittings.

264. All summary, sub-summary, appeal, and other causes returnable at Halifax, which can now be heard in a summary way, may be tried before a judge at chambers in vacation, if the plaintiff in the suit, or the appellant or appellee in cases of appeal, shall desire to bring on the trial before the then next sittings of the supreme court; and causes other than summary may be tried in like manner, if both parties consent thereto in writing.

265. Ten days notice shall, in such case, be given to the defendant, or by either the appellant or appellee in case of appeals, or his attorney, of the time and place of trial, if the defendant reside within the county—twenty days if in any part of the province, except Cape Breton, and thirty days if within that island.

266. In all other counties such causes, if not disposed of on the first day of the term, may be tried either in court or at chambers on any other day in term.

267. All parties required to attend and give evidence at the trial, or to produce books, papers, deeds, or other documents, shall be subject to the same penalties for not appearing as witnesses, or not producing such documents, as if the trial had taken place before the court, and the judge shall have the same control over the proceedings.

268. The court may, from time to time, make rules to regulate the practice, and direct when and where such trials shall take place.

269. The court may, from time to time, make rules to regulate all appeals from the decision of a judge at chambers.

270. In case of any action founded upon a bill of exchange or other negotiable instrument, it shall be lawful for a court or a judge to order that the loss of such instrument shall not be set up—provided an indemnity is given, to the satisfaction of the court or judge, against the claims of any other person upon such negotiable instrument.

271. Writs of enquiry shall be made returnable in ten days after the issuing thereof, and the party plaintiff shall be entitled to judgment for the amount awarded him with costs in fourteen days after the execution of the writ, CHAP. 134.
Writs of enquiry.

APPENDIX A.

No. 1.

SS.

Victoria, by the grace of God, &c.

To the sheriff of ———, or any other of our sheriffs:

We command you to summon C. D., of ———, to appear in the supreme court at ———, within ——— days after the service of this writ, at the suit of A. B., who says that the said C. D. is indebted to him [*for work and materials provided by the plaintiff for the defendant, at his request, or as the case may be,*] and he claims ——— dollars.

Issued this ——— day of ——— A. D. 18—.

—————, prothonotary,
E. F., plaintiff's attorney, [*or in person.*]

No. 2.

SS.

Victoria, by the grace of God, &c.

To the sheriff of ———, or to any other of our sheriffs:

We command you forthwith, upon security being given according to law, to cause to be replevied to A. B., his cattle, [*or goods,*] viz., ———, which C. D., of ———, unjustly detains as it is said; and that you summon the said C. D., to appear in the supreme court, at ———, within ——— days after the service of this writ, at the suit of the said A. B., who says that the said C. D. is unjustly detaining the said cattle, [*or goods.*]

Issued this ——— day of ———, A. D. 18—.

—————, prothonotary,
E. F., plaintiff's attorney, [*or in person.*]

No. 3.

SS.

Victoria, by the grace of God, &c.

To the sheriff of ———, or any other sheriff:

We command you to summon C. D., late of ———, an absent or absconding debtor, to appear in the supreme court at ———, within thirty days ———, at the suit of A. B., who says that ——— and the plaintiff claims ——— dollars.

Issued the ——— day of ———, A. D., 18—.

—————, prothonotary.
E. F., plaintiff's attorney, [*or A. B., plaintiff in person.*]
[*To be endorsed.*]

By oath for ——— [*insert the sum sworn to or allowed by the judge.*]

CHAP. 134.

No. 4.

SS.

Victoria, by the grace of God, &c.
To the sheriff of ——— or any other sheriff:

We command you to attach the goods, chattels or estate of C. D., late of ———, an absent or absconding debtor, to the value of ———, [*the sum sworn to or for which the summons was allowed,*] to respond the judgment which may be obtained by A. B., who hath taken proceedings against the said C. D., as an absent or absconding debtor, in our supreme court at ———, and we do command you that immediately after the execution hereof you do return this writ unto our supreme court at ———, together with your doings thereon and the day of execution.

Issued this — day of ———, 18—.

———, prothonotary.

E. F., plaintiff's attorney, [*or A. B., plaintiff in person.*]

By oath for ——— [*insert the sum sworn to or allowed when summons was issued.*]

No. 5.

SS.

Victoria, by the grace of God, &c.
To the sheriff of ———, or to any other sheriff.

We command you to summon G. H., of ———, the agent or trustee of C. D., late of ———, an absent or absconding debtor, to appear in our supreme court at ———, [*being the county in which the agent resides,*] within fifteen days after service, ———, to declare, discover and disclose what goods or credits of the said C. D., were in his hands or possession, or under his management or control, at the time of the service of this writ upon him ———, in a suit prosecuted by A. B., against the said C. D., as an absent or absconding debtor, in our said court at ———.

Issued this — day of ———, A. D. 18—.

———, prothonotary.

E. F., plaintiff's attorney [*or A. B., plaintiff in person.*]

No. 6.

SS.

Victoria by the grace of God, &c.
To the sheriff of ———, or any other of our sheriffs:

We command you to take C. D. of ———, if he shall be found in your bailiwick, and him safely keep until he shall have given you bail, or made deposit according to law, in an action at the suit of A. B., or until the said C. D. shall by other lawful means be discharged from your custody; and we do further command you that immediately after the execution hereof you do return this writ into our supreme court at ———, together with the manner in which you shall have executed the same, and the day of the execution

thereof; or if the same shall remain unexecuted, then that CHAP. 134.
 you do return the same at the expiration of one month
 from the date hereof.

Issued this — day of —, A. D., 18—.

E. F., plaintiff's attorney, [*or in person.*]
To be endorsed—

By oath for [*here insert the sum sworn to.*]

No. 7.

SPECIMENS OF FORMS.

Particulars of demand.

The following are the particulars of the plaintiff's claim:

1864.		
June 20.	Half year's rent to this day, of house and premises in — street, Halifax,	\$102 00
Sept. 12.	10 barrels of flour, at \$5,	50 00
Decr. 1.	Money received by defendant,	68 00
		<hr/>
		220 00
	Paid,	60 00
		<hr/>
	Balance due,	\$160 00
		<hr/>

Or,

To butcher's meat and goods, supplied between the 1st of Jan'y, 1859, and the 1st Jan'y, 1860,	\$208 00
Paid,	80 00
	<hr/>
Balance,	\$128 00
	<hr/>

Or,

\$200. Principal and interest due on a bond, dated the
 — day of —.

Or,

\$360. Principal and interest due on a covenant contained in a deed, dated the — day of —, to pay \$400 and interest.

Or,

\$340 on a bill of exchange for \$400 dated the 2nd February, 1864. Accepted [*or drawn, or endorsed*] by the defendant.

Or,

\$200 on a guarantee, dated the 2nd February, 1864, whereby the defendant guaranteed the payment by E. F., of goods supplied, or to be supplied to him.

CHAP. 134.*In cases where interest is payable.*

The plaintiff also claims interest on \$ — of the above sum from the date of the writ until judgment.

No. 8.

In the supreme court, —, on the — day of —, A. D. 18—. [*Day of signing the judgment.*]

To wit: A. B., in his own proper person, [*or by — his attorney,*] sued out a writ of summons against C. D., with the particulars annexed as follows:

[*here copy the particulars of demand.*]

And the said C. D. has not appeared, Therefore it is considered that the said A. B. recover against the said C. D. — dollars, together with \$ —, for costs of suit.

No. 9.

Notice is hereby given, that if the defendant do not appear and plead within four days after the period specified in the writ for his appearance, the plaintiff shall be at liberty to sign [*judgment by default, if there are no particulars of demand annexed; and if there be particulars of demand*] final judgment for any sum not exceeding the sum claimed in his particulars of demand, with interest at the rate specified, and costs.

No. 10.

Cause, { A. B.,
 vs.
 C. D.

I appear for C. D., the defendant in this cause [*or in person.*] E. F.

No. 11.

Writ of revivor.

SS.

Victoria, by the grace of God, &c.

To the sheriff of —, or to any other of our sheriffs:

We command you that you summon C. D., of —, to appear in the supreme court at —, within — days after the service of this writ, to shew cause why A. B. [*or 'E. F., as executor of the last will and testament of A. B., deceased,' or as the case may be,*] should not have execution against him [*if against a representative, here insert, 'as executor of the last will and testament of —, deceased,' or as the case may be,*] of a judgment whereby the said A. B. [*or as the case may be,*] on the — day of —, recovered against him [*or as the case may be,*] \$ —, and that you notify the said C. D. that in default of his so doing,

the said A. B. [*or as the case may be*] may proceed to execution. CHAP. 134.

Dated this — day of —, A. D., 18—.

—, prothonotary.

G. H., plaintiff's attorney.

No. 12.

Form of a rule or summons where a judgment creditor applies for execution against a judgment debtor.

[*Formal parts as at present.*]

C. D., to shew cause why A. B. [*or as the case may be*] should not be at liberty to enter a suggestion in an action, wherein the said A. B. was plaintiff, and the said E. F. was defendant, and wherein the said A. B. obtained judgment for \$ — against the said E. F. on the — day of —, that it manifestly appears to the court, that the said A. B. is entitled to have execution of the said judgment, and to issue execution thereupon, and why the said C. D. should not pay the said A. B. the costs of this application, to be taxed.

NOTE.—*The above form may be modified so as to meet the case of an application by or against the representative of a party to the judgment.*

No. 13.

Form of suggestion that the judgment creditor is entitled to execution against the judgment debtor.

And now on the — day of —, it is suggested and manifestly appears to the court, that the said A. B. [*or 'E. F., as executor of the last will and testament of the said A. B., deceased,' or as the case may be,*] is now entitled to have execution of the judgment aforesaid, against the said C. D. [*or 'against G. H. as the executor of the last will and testament of the said C. D.' or as the case may be.*] Therefore it is considered by the court, that the said A. B. [*or 'E. F. as executor aforesaid,' or as the case may be,*] ought to have execution of the judgment against the said C. D. [*or 'against G. H. as executor as aforesaid,' or as the case may be.*]

No. 14.

Form of writ in ejectment.

SS.

Victoria, by the grace of God, &c.

To the sheriff of —.

We command you to summon G. H., J. K., and L. M. to appear in the supreme court, at —, within — days after the service of this writ, at the suit of A. B., C. D., and

CHAP. 134. E. F., who say that the said G. H., J. K., and L. M., withhold the possession to which the said A. B., C. D., and E. F., or some, or one of them, claim to be entitled, of a certain house and ten acres of land situate at ———, in the county of ———, and described as follows: [*describe the property with reasonable certainty,*] and for the withholding of which they claim ——— dollars damages.

Issued this ——— day of ———, A. D., 18—.

N. O., plaintiff's attorney. ———, prothonotary.

No. 15.

Notice to be endorsed on the writ.

Notice is hereby given, that if the defendant do not appear and defend the possession of the property claimed by the within writ, or such part thereof as he may be advised, the plaintiff will be at liberty to sign judgment at the expiration of four days after the period specified in the writ for his appearance, and the defendant may thereupon be turned out of possession.

No. 16.

Judgment in case of non-appearance.

G. H., J. K. and L. M., were summoned to answer A. B., C. D., and E. F., for withholding possession of a house and ten acres of land, situate at ———, in the county of ———, and described as follows*:

And no appearance has been entered to the said writ, [*or where defence has been made to a part, except as to—describe it.*] Therefore it is considered that the said A. B., C. D., and E. F., do recover possession of the premises above mentioned, [*or where defence is to part, except as to part for which defence has been made as aforesaid,*] with the appurtenances, and also \$ ———, for his costs of suit [*in cases where damages shall have been assessed, add,* and that he do also recover \$ ———, for his damages assessed in respect of the withholding possession of the same by the defendant.]

No. 17.

Judgment in case of appearance.

[*As in the last form to the*.*]

And the defendants appear and defend the possession [*or of part thereof, describing the part.*] Jury empannelled and sworn, who say that the plaintiffs [*or one of them, as the case may be,*] are entitled to possession of the premises, [*or to the said part thereof;*] and they do assess damages

for the detention thereof in the sum of \$——, to be paid CHAP. 134.
to the said A. B., C. D., and E. F.

Therefore it is considered that the said A. B., C. D., and E. F., do recover [*as above where judgment is for non-appearance,*] and also the sum of \$——, by the jury assessed as aforesaid, together with costs of suit.

No. 18.

Form of pleas in ejectment.

The said C. D., [*defendant*] says that the plaintiffs are not, nor is either of them, entitled to the possession of the said messuage and lot of land claimed by them. [*Or if the defendant only defends for a part,*]*—*The said C. D. says he only defends for a part of the premises claimed by the plaintiff, and which is thus described: [*describe it with reasonable certainty,*] and he disclaims all right to the possession of the residue of said premises; and as to the part for which he defends, says that the said plaintiffs are not, nor is either of them, entitled to the possession of the part of the said premises above specified.

Plea by landlord shall commence thus: And E. F., admitted to defend as landlord of the said premises, [*or part thereof, describing the part,*] says that

No. 19.

Form of a plea under tenancy in common.

And the defendant says that he is tenant in common of the premises [*or part, as the case may be,*] with the said plaintiff, [*or with A. B., one of the said plaintiffs,*] and defends as such, and admits the right of the said [*claimant*] to an undivided share of the said property, and denies any actual ouster of him from the said property.

No. 20.

The said C. D. [*defendant*] says that he was not in possession of the whole or any part of the premises claimed in the plaintiff's writ at the time of the commencement of this suit, and does not withhold the same.

No. 21.

In the supreme court.

I, A. B., of ——, in the county of ——, make oath and say that I have the right to the possession of the following cattle [*or goods, as the case may be,*] to wit: ——, as I verily believe, and that C. D. unjustly detains the same.

CHAP. 134.

No. 22.

Replevin Bond.

[*Bond in the usual form from A. B. (plaintiff,) and E. F. and G. H.*]

Whereas the said A. B. has sued out a writ of replevin against the said C. D. to obtain possession of certain cattle [*or goods*] to wit:——, which the said A. B. asserts to be his property.

Now, the condition of this obligation is such, that if the said A. B. shall not prosecute his suit with effect and without delay, or if suit is carried on and continued between the said A. B. and C. D. touching the property of the said cattle [*or goods*] and the court shall adjudge that the said cattle [*or goods*] shall be restored to the said C. D. with damages for detaining the same, then if the said A. B. shall restore the said cattle [*or goods*] and pay and satisfy any judgment that may be obtained against him, this bond shall become void.

[*Where the plaintiff himself does not join in the bond, the form must be altered to conform to the fact.*]

No. 23.

Security given by the defendant to obtain a return of property.

[*Bond in the usual form from C. D. (defendant) and E. F. and G. H.*]

Whereas the said C. D. claims to retain certain cattle [*or goods*] to wit:——, to recover possession of which the said A. B. has sued out a writ of replevin.

Now the condition of this obligation is such that if the court shall adjudge that the said cattle [*or goods*] shall be restored to the said A. B., with or without damages for detaining the same, then if the said C. D. shall restore the cattle [*or goods*], and pay and satisfy any judgment that may be recovered against him, this obligation shall be void, but otherwise shall remain in force.

[*Where the defendant himself does not join in the bond, the form must be altered to conform to the fact.*]

No. 24.

Bail bond.

[*Bond in the usual form C. D. (defendant) and E. F. and G. H.*]

The condition of this obligation is such that if the above bounden C. D. do appear in the supreme court at ——, on the —— day of ——, to answer to the suit of A. B.,

and in case judgment shall be obtained against the said C. D., if he shall satisfy such judgment, or shall render himself, or be rendered by the said E. F. and G. H. into the custody of the sheriff of the county of ———, then the said obligation to be void. CHAP. 134.

APPENDIX B.

SPECIMENS OF FORMS OF PLEADINGS.

Statements of causes of action in the writ.

To answer the said A. B., who says that C. D. is indebted to him for [*here state the subject of the claim as in the following forms,*] and the plaintiff claims ——— dollars :

For work done and materials provided by the plaintiff for the defendant, at his request.

For money lent by the plaintiff to the defendant.

For money paid by the plaintiff for the defendant, at his request.

For money received by the defendant for the use of the plaintiff.

For money found to be due from the defendant to the plaintiff on an account stated between them.

For a messuage and lands sold and conveyed by the plaintiff to the defendant.

For the good will of a business of the plaintiff, sold and given up by the plaintiff to the defendant.

For the defendant's use, by the plaintiff's permission, of messuages and lands of the plaintiff.

For the defendant's use, by the plaintiff's permission, of a fishery of the plaintiff.

For the hire of [*as the case may be*] by the plaintiff, let to hire to the defendant.

For freight for the conveyance by the plaintiff, for the defendant at his request, of goods in ships.

For the demurrage of a ship of the plaintiff kept on demurrage by the defendant.

Who says,—that the defendant on the ——— day of ———, A. D. ———, by his promissory note, now over due, promised to pay to the plaintiff ——— dollars, two months after date, but did not pay the same.

Who says,—that one A. B. on, &c. [*date*] by his promissory note, now over due, promised to pay to the defendant, or order, ——— dollars, two months after date; and the defendant endorsed the same to the plaintiff, and the said note was duly presented for payment, and was dishonored, whereof the defendant had due notice, but did not pay the same.

Who says,—that the plaintiff on, &c. [*date*] by his bill of

CHAP. 134. exchange, now over due, directed to the defendant, required the defendant to pay to the plaintiff ——— dollars, two months after date; and the defendant accepted the said bill, but did not pay the same.

Who says,—that the defendant and the plaintiff agreed to marry one another, and a reasonable time for such marriage has elapsed, and the plaintiff has always been ready and willing to marry the defendant, yet the defendant has neglected and refused to marry the plaintiff.

Who says,—that the plaintiff and defendant agreed to marry one another on a day now elapsed, and the plaintiff was ready and willing to marry the defendant on that day, yet the defendant neglected and refused to marry the plaintiff.

Who says,—that the defendant by warranting a horse to be then sound and quiet to ride, sold the horse to the plaintiff, yet the said horse was not then sound and quiet to ride.

Who says,—that the plaintiff and the defendant agreed by charter party, that the plaintiff's ship, called the "Ariel," should, with all convenient speed, sail to R, or so near thereto as she could safely get; and that the defendant should there lade her with a full cargo of tallow or other lawful merchandize, which she should carry to H, and there deliver on payment of freight, at \$—— per ton; and that the defendant should be allowed ten days for loading and ten for discharge, and ten days on demurrage, if required, at \$—— per day; and that the plaintiff did all things necessary on his part to entitle him to have the agreed cargo loaded on board the said ship at R, and that the time for so doing has elapsed, yet the defendant made default in loading the agreed cargo.

Who says,—that the plaintiff let to the defendant a house, No. —, for seven years, to hold from the —— day of ——, A. D., 18—, at \$—— a year, payable quarterly, of which rent —— quarters are due and unpaid.

Who says,—that the plaintiff, by deed, let to the defendant a house, No.——, to hold from the —— day of —— A. D.——; and the defendant, by the said deed, covenanted with the plaintiff well and substantially to repair the said house during the said term, [*according to the covenant,*] yet the said house was, during the said term, out of good and substantial repair.

For wrongs, independent of contract.

A. B. says that the defendant broke and entered certain land of the plaintiff called the big field, and depastured the same with cattle.

That the defendant assaulted and beat the plaintiff, and gave him into custody to a policeman, and caused him to be imprisoned in a police office.

That the defendant debauched and carnally knew the plaintiff's wife. CHAP. 134.

That the defendant converted to his own use the plaintiff's goods, that is to say: iron hoops, household furniture, *[as the case may be.]*

That the defendant detained from the plaintiff, his title deeds of land called Belmont, in the county of ———, that is to say, *[describe the deeds.]*

That the plaintiff was possessed of a mill, and by reason thereof, was entitled to the flow of a stream for working the same; and the defendant by cutting the bank of the said stream, diverted the water thereof away from the said mill.

That the defendant falsely and maliciously spoke and published of the plaintiff the words following, that is to say:—"he is a thief."

—*[If there be any damage here state it, with such reasonable particularity as to give notice to the plaintiff of the peculiar injury complained of: for instance]* whereby the plaintiff lost his situation as ———, in the employ of ———.

That the defendant falsely and maliciously printed and published of the plaintiff, in a newspaper, called "——" the words following, that is to say: "he is a regular prover under bankruptcies"; the defendant meaning thereby that the plaintiff had proved, and was in the habit of proving fictitious debts against the estates of bankrupts, with the knowledge that such debts were fictitious.

Commencement of a plea.

The defendant by ———, his attorney, *[or in person,]* says, *[here state the substance of the plea.]*

And for a second plea the defendant says *[here state the second plea.]*

NOTE.—*The several pleas ought to be written in separate paragraphs, and numbered either with figures or in words, in the body thereof, to prevent confusion.*

Pleas in actions on contract.

That he did not promise as alleged.

[The plea is applicable to other declarations on simple contracts, not on bills and notes. It would be unobjectionable to use, "did not warrant," "did not agree," or any other appropriate denial.]

That the alleged deed is not his deed.

That the alleged cause of action did not accrue within six years, *[state the period of limitation applicable to the case]* before this suit.

That before the action he satisfied and discharged the plaintiff's claim by payment.

That the plaintiff at the commencement of this suit, was and still is indebted to the defendant, in an amount equal

CHAP. 134. to [or greater than] the plaintiff's claim, for [here state the cause of set-off, as in a declaration; see forms ante.]

That after the alleged claim accrued, and before this suit, the plaintiff, by deed, released the defendant therefrom.

Pleas in actions for wrongs, independent of contracts.

That he did not commit the assault.

That he did what is complained of by the plaintiff's leave.

That the plaintiff first assaulted the defendant, who thereupon necessarily committed the alleged assault in his own defence.

Replications.

The plaintiff joins issue upon the defendant's——pleas.

The plaintiff as to the second plea, says [here state the answer to the plea, as in the following forms.]

That the alleged release is not the plaintiff's deed.

That the alleged release was procured by the fraud of the defendant.

That the alleged set-off did not accrue within six years before this suit.

That the plaintiff was possessed of land whereon the defendant was trespassing and doing damage, whereupon the plaintiff requested defendant to leave the said land, which the defendant refused to do, and thereupon the plaintiff laid his hands on defendant to remove him, doing no more than was necessary for that purpose, which is the alleged first assault of the plaintiff.

New assignment.

The plaintiff as to the—— and —— pleas, says that, he sues not for the trespasses therein admitted, but for trespasses committed by the defendant in excess of the alleged rights, and also in other parts of the said land, and on other occasions and for other purposes than those referred to in the said pleas, [as the case may be.]

[If the plaintiff replies, and new assigns, the new assignment may be as follows:]

And the plaintiff as to the—— and —— pleas, further says, that he sues not only for the trespasses in those pleas admitted, but also for, &c.

[If the plaintiff replies and new assigns to some of the pleas, and new assigns only as to the others, the form may be as follows:]

And the plaintiff as to the—— and —— pleas, further says, that he sues not for the trespasses in the—— pleas [the pleas not replied to,] admitted, but for the trespasses in the—— pleas [the pleas replied to,] admitted, and also for, &c.

Part the Second.

1. In case any defendant being a British subject, is residing out of this province, it shall be lawful for the plaintiff to issue a writ of summons in the form contained in schedule A, to this act annexed, which writ shall bear the endorsement contained in the said form purporting that such writ is for service out of this province: And the time for appearance by the defendant to such writ shall be regulated by the distance from Nova Scotia of the place where the defendant is residing, and it shall be lawful for the court or judge, upon being satisfied by affidavit that there is cause of action which arose within this province, or in respect of a breach of a contract made within the province, in whole or in part, or intended to be executed in whole or in part within this province, or, in respect of a contract made and entered into between parties, one of whom, at the time of making such contract, shall reside within this province, and that the writ was personally served upon the defendant, or that reasonable efforts were made to effect personal service thereof upon the defendant, and that it came to his knowledge, and either that the defendant wilfully neglects to appear to such writ, or that he is living out of the province in order to defeat or delay his creditors, to direct from time to time that the plaintiff shall be at liberty to proceed in the action in such manner, and subject to such conditions as to such court or judge may seem fit, having regard to the time allowed for the defendant to appear being reasonable, and to the other circumstances of the case; provided always, that the plaintiff shall, and he is hereby required to prove the amount of the debt or damages claimed by him in such action, either before a jury upon a writ of enquiry, or before a judge; and the making such proof shall be a condition precedent to his obtaining judgment.

Proceedings
against a British
subject
resident out of
this province.

2. In any action against a person residing out of the province, and not being a British subject, the like proceedings may be taken as against a British subject resident out of this province, save that in lieu of the form of the writ of summons in the schedule A, to this act annexed, the plaintiff shall issue a writ of summons according to the form contained in the schedule B, hereto annexed, and shall in manner aforesaid serve a notice of such last mentioned writ upon the defendant therein mentioned, which notice shall be in the form contained in the said schedule B, and such service shall be of the same force and effect as the service of the writ of summons in any action against a British subject resident abroad, and by leave of the court or a judge, upon their or his being satisfied by affidavit as

Proceedings
against a
foreigner resi-
dent out of this
province.

CHAP. 134. aforesaid, the like proceedings may be had and taken thereupon.

Amendment of writ.

3. If the plaintiff or his attorney shall omit to insert in or indorse on any writ or copy thereof, any of the matters required by this chapter to be inserted therein, or indorsed thereon, such writ or copy thereof shall not on that account be held void, but it may be set aside as irregular, or amended upon application to be made to the court out of which the same shall issue, or to a judge, and such amendment may be made upon any application to set aside the writ upon such terms as to the court or judge may seem fit.

Substitution of forms.

4. If either of the forms of writ of summons contained in the schedules A and B, shall by mistake or inadvertence be substituted for the other of them, such mistake or inadvertence shall not be an objection to the writ, or any other proceeding in such action, but the writ may upon an *ex parte* application to a judge, whether before or after any application to set aside such writ or any proceeding thereon, and whether the same or notice thereof shall have been served or not, be amended by such judge without costs.

Concurrent writ.

5. A writ for service within the province may be issued and marked as a concurrent writ with one for service out of the province; and a writ for service out of the province may be issued and marked as a concurrent writ with one for service within the province.

Affidavit of service.

6. Any affidavit of service of writ or notice, or any other affidavit for the purpose of enabling the court or a judge to direct proceedings to be taken against defendants out of the province, may be sworn before any judge of a court of record or justice of the peace in any of her majesty's dominions, or before any consul general, or consul, vice consul, or consular agent, appointed by her majesty at any foreign port or place, whose official character and signature shall be certified under the hand and seal of a notary public—provided always, that if any person shall within this province use or tender in evidence any such affidavit with a false or counterfeit signature thereto, knowing such signature to be false or counterfeit, he shall be guilty of felony, and shall, upon conviction, be liable to be imprisoned in the provincial penitentiary for a term not exceeding three years, nor less than one year, with hard labor.

Penalty for tendering affidavit with false signature.

SCHEDULES.

CHAP. 134.

A.

Writ where the defendant, being a British subject, resides out of the jurisdiction of this province.

SS.

Victoria, by the grace of God, &c.

To C. D. of ———, in the ——— of ———.

We command you that within [*here insert a sufficient number of days within which the defendant might appear with reference to the distance he may be at from this province,*] days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the supreme court of Nova Scotia, at ———, in an action at the suit of A. B., who says that the said C. D. is indebted to him [*for work done and materials provided by the plaintiff for the defendant at his request, or as the case may be,*] and take notice that in default of your so doing, the said A. B. may, by leave of the court or judge, proceed therein to judgment and execution; and he claims ———.

Issued the ——— day of ———, A. D. 18—.

———, prothonotary.

E. F., plaintiff's attorney, [*or in person.*]

Memorandum to be subscribed on the writ.

N. B.—This writ is to be served within ——— calendar months from the date hereof; or if renewed, from the date of such renewal, including the day of such date, and not afterwards.

Endorsement to be made on the writ before service thereof.

This writ is for service out of the jurisdiction of the court, and was issued by E. F., of ———, attorney for the said plaintiff, [*or, this writ was issued in person by A. B. who resides at ———, mention plaintiff's place of residence.*]

B.

Writ where a defendant, not being a British subject, resides out of the jurisdiction of this province.

SS.

Victoria, by the grace of God, &c.

To C. D., of ———, in ———.

We command you that within [*here insert a sufficient number of days, within which the defendant might appear, with reference to the distance he may be at from Nova Scotia*] days after the notice of this writ is served on you, inclusive of the days of such service, you do appear or cause an appearance to be entered for you in our supreme court of Nova

CHAP. 135. Scotia at ———, in an action at the suit of A. B., who says that the said C. D. is indebted to him [*for work and materials provided by the plaintiff for the defendant at his request, or as the case may be,*] and take notice that in default of your so doing the said A. B. may, by leave of the court or a judge, proceed therein to judgment and execution; and he claims ——— dollars.

Issued the ——— day of ———, A. D. 18—.

—————, prothonotary.
E. F. plaintiff's attorney, [*or in person.*]

Memorandum to be subscribed on the writ.

N. B.—Notice of this writ is to be served within six calendar months from the date thereof, including the day of such date, and not afterwards.

Endorsements as in schedule A.

Notice of the foregoing writ.

To G. H., of ———, in ———

Take notice that A. B., of ———, in the province of Nova Scotia, has commenced an action at law against you C. D., in the supreme court of Nova Scotia, at ———, by a writ of that court, dated the ——— day of ———, A. D. 18— in which he says that you are indebted to him [*for work done and materials provided by the plaintiff for the defendant, at his request, as the case may be,*] and you are required within ——— days after receipt of this notice, to defend the said action, by causing an appearance to be entered for you in the said court, to the said action, and in default of your doing so, the said A. B. may, by leave of the court or a judge, proceed thereon to judgment and execution.

The following are the particulars of the said A. B.'s claim, &c., &c. [signed] E. F., plaintiff's atty.,
[*or in person.*]

Amended in

CHAPTER 135.

1865, Cap. 1, Sec. 1

OF WITNESSES AND EVIDENCE AND THE PROOF OF WRITTEN DOCUMENTS.

Commission
for taking depo-
sitions of ab-
sent witnesses,
how issued, &c.

1. In any civil action, the court or a judge, or prothonotary upon sufficient cause being shewn by affidavit, may order a commission to issue for taking the depositions of witnesses residing out of the province, in such manner and under such restrictions as the court or judge or prothonotary may direct; and the depositions so taken may

The following section to be added. "Copies of any documents written or proceeding returned to or filed in the Provincial Court or office and copies extracted from the Minutes of the Executive Council, duly certified by the

be read in evidence at the trial of the cause; and if the parties in any cause pending in any court consent in writing, to examine witnesses residing out of the province, whether by interrogatories or *viva voce* such consent and the proceedings had thereunder shall be as valid in all respects as if a commission had been sued out and the proceedings had thereunder. CHAP. 135.

2. Examination of witnesses residing abroad may be opened by the prothonotary of the court at the instance of either party; and either party may notify the other of their being so returned, and no objections to such examinations being read shall avail, unless taken within eight days next after such notice served; the party objecting shall be required to specify his objections in writing, and the court or a judge, on summons, may then hear such objections and decide thereon. Examinations, by whom opened, objections when to be taken; proceedings thereon.

3. Where a court or tribunal of competent jurisdiction in any part of her majesty's dominions, or in any foreign country, shall, in some proceeding before it, issue or authorize a commission or order for obtaining the testimony of some person being within this province or the production of papers therein, it shall be lawful for the supreme court or a judge, if satisfied of the authenticity of the commission or order, and the propriety of the examination or production by rule or order, to direct the examination of the persons whom it is desired to examine, and the production of papers when required in the manner prescribed in the commission or order for examination, or in such other manner, and before such person and with such notice, as the court or a judge may direct. Supreme court may order examinations of witnesses under commissions from courts abroad.

4. In civil causes depositions of witnesses who are about to leave the province, or are aged, infirm or otherwise unable to travel, may be taken before a judge or commissioner, on due notice being given to the adverse party; and any party, upon shewing sufficient cause by affidavit, may obtain from a judge or commissioner an order in such terms as he shall think fit, to compel an unwilling witness in such cases to give evidence before the judge or commissioner. Depositions of witnesses about to leave province, aged or infirm; how taken,

5. Where such witnesses reside in any other county than that in which the cause is to be tried, a judge or commissioner on sufficient cause being shewn by affidavit, may give such order as he shall think fit for the depositions *de bene esse* of such witnesses, to be taken before a judge or commissioner by interrogatories or otherwise. When such witnesses do not reside in county where case is pending,

6. In all cases of depositions to be taken before any judge or commissioner, at least twenty-four hours notice in writing shall be given to the adverse party or to his attorney, where such party or his attorney resides within the county, and an additional twenty-four hours notice for every twenty miles that such party or his attorney shall Notice of depositions to be given; length and contents of notice.

Shall be receivable in evidence to the same extent as the original.

CHAP. 135. reside beyond the limits of the county, and such notice shall in all cases contain the names of the witnesses to be examined.

Refusal of witness to obey order for examination a contempt of court.

7. Where any rule or order shall be made for examination of witnesses or production of papers under any of the provisions of this chapter, and the rule or order together with a notice containing the time and place of attendance, signed by the person who is to take the examination, shall have been duly served on the party to be examined, and he shall have been tendered his legal fees for attendance and travel, the refusal or neglect to obey any such rule or order shall be deemed a contempt of court, and may be punished by process of contempt.

Writings and documents; what to be produced.

8. No witness shall be compelled under any rule or order under this chapter to produce any writing or document that he could not be compelled to produce on trial, nor to answer any question he would not be bound to answer in court.

Depositions when to be read in evidence.

9. No deposition taken *de bene esse* to be used on trials in this province, shall be read in evidence without the consent of the party against whom the same is offered, unless the judge shall be satisfied that the deponent is dead, or beyond the jurisdiction, or unable from some infirmity to attend the trial; but in case of his being so satisfied, the deposition, certified under the hand of the judge or commissioner, shall, without proof of his signature, be received and read in evidence, saving all just exceptions.

Examinations *de bene esse* not to be set aside for technical objections.

10. No examinations of witnesses residing abroad or taken *de bene esse* shall be set aside by the court or any judge thereof, unless the party objecting shall lay grounds by affidavit, which may be opposed as in other cases, and unless the court or judge shall be of opinion that the objections are not of a purely technical character, and that substantial justice requires that such objections should prevail, which shall be so expressed in the order.

Interrogatories may be delivered with declaration or plea.

11. In all causes in the supreme court, the plaintiff may with the declaration, and the defendant may with the plea, or either of them may at any other time deliver to the opposite party, or his attorney, provided such party, if not a body corporate, would be liable to be called and examined as a witness upon such matter, interrogatories in writing, upon any matter as to which discovery may be sought; and require such party, or in the case of a body corporate, any of the officers of such body corporate, within ten days, to answer the questions in writing, by affidavit, to be sworn before and attested by the court, a judge, or commissioner, or justice of the peace, and to be subscribed by the party answering, and filed in the prothonotary's office, and notice thereof given to the attorney on the opposite side; and any party or officer omitting,

without just cause, sufficiently to answer all questions as to which a discovery may be sought, within the above time, or such extended time as the court or a judge shall allow, shall be deemed to have committed a contempt of the court, and shall be liable to be proceeded against accordingly. CHAP. 135.

12. In case of omission, without just cause, to answer sufficiently such written interrogatories, it shall be lawful for the court or a judge at their discretion to direct an oral examination of the interrogated party, as to such points as they may direct, before a judge or commissioner; and the court or a judge may, by such rule or order, or any subsequent rule or order, command the attendance of such party before the person appointed to take such examination, for the purpose of being orally examined as aforesaid, or the production of any writings or other documents to be mentioned in such rule or order, and may impose therein such terms as to such examination, and the costs of the application, and the proceedings thereon, and otherwise, as to such court or judge shall seem just.

In case of insufficient answer, party may, by order, be examined orally.

13. Such rule or order shall have the same force and effect, and may be proceeded upon, as nearly as may be, in like manner as an order made for the deposition *de bene esse* of witnesses about to leave the province, to be taken before a judge or commissioner, except that the answers to the interrogatories, or the oral examinations, shall be held to be taken absolutely, and not *de bene esse*, unless otherwise specially ordered.

Order for oral examination, effect of.

14. The answers to the interrogatories filed as aforesaid, and the answers on the said oral examination, may be used as evidence taken under commission may be used, and without the party offering the same being precluded from contraverting or contradicting any part thereof.

Answers may be used as evidence.

15. Upon motions founded upon affidavits, it shall be lawful for either party, with leave of the court or a judge, to make affidavits in answer to the affidavits of the opposite party upon any new matter arising out of such affidavits, subject to all such rules as may hereafter be made respecting such affidavits.

Affidavits in answer to new matter.

16. Upon the hearing of any motion or summons, it shall be lawful for the court or a judge, at their discretion, and upon such terms as they shall think reasonable, from time to time, to order such documents as they may think fit to be produced, and such witnesses as they may think necessary to appear and be examined *viva voce*, either before such court or judge, or before a commissioner, and upon hearing such evidence, or reading the report of such commissioner, to make such rule or order as may be just.

Court or judge may order documents to be produced and witnesses to be examined *viva voce*.

17. The court or a judge may, by such rule or order, or any subsequent rule or order, command the attendance of the witnesses named therein, for the purpose of being

May command attendance of witness or production of documents—

CHAP. 135. examined, or the production of any writings or other documents to be mentioned in such rule or order; and such rule or order shall be proceeded upon as nearly as may be, in the same manner as rules or orders made for the depositions *de bene esse* of witnesses, to be taken before a judge or commissioner, are now proceeded upon, and it shall be lawful for the court, or judge, or commissioner, to adjourn the examination from time to time, as occasion may require; and the proceedings upon such examination shall be conducted, and the depositions taken down, as nearly as may be in the mode now in use with respect to the *viva voce* examination of witnesses *de bene esse* when about to leave the province.

Proceedings to be conducted as in examinations *de bene esse*.

Application by summons to compel examination of party refusing to make affidavit.

18. Any party to any civil action or other civil proceedings in the supreme court, requiring the affidavit of a person who refuses to make an affidavit, may apply by summons for an order to such person to appear and be examined upon oath before a judge or commissioner, to whom it may be most convenient to refer such examination, as to the matter concerning which he has refused to make an affidavit; and a judge may, if he think fit, make such order for the attendance of such person before the person therein appointed to take such examination, for the purpose of being examined as aforesaid, and for the production of any writings or documents to be mentioned in such order, and may thereupon impose such terms as to such examination, and the costs of the application and proceedings thereon, as he shall think fit.

Production of documents in hands of opposite party.

19. Upon the application of either party to any cause or other civil proceeding in the supreme court, upon an affidavit of such party of his belief that any document, to the production of which he is entitled for the purpose of discovery or otherwise, is in the possession or power of the opposite party, it shall be lawful for the court or a judge to order that the party against whom such application is made, or if such party is a body corporate that some officer to be named of such body corporate, shall answer on affidavit, stating what documents he has in his possession or power relating to the matters in dispute, or what he knows as to the custody they are in, and whether he objects, and if so, on what grounds, to the production of such as are in his possession or power; and upon such affidavits being made the court or judge may make such further order thereon as shall be just.

Depositions to be returned to prothonotary; how used, effect of.

20. Depositions taken by virtue of the four next preceding sections shall be carefully taken down by the examiner, and by him be returned to and kept in the office of the prothonotary of the court, and office copies of such depositions may be given out and the depositions may be otherwise used in the same manner as in the case of depositions now taken *de bene esse* of witnesses about to leave

the province, except that the depositions shall be held to be taken absolutely, unless otherwise specially ordered. CHAP. 135.

21. It shall be lawful for any judge or commissioner, authorized under any rule or order for taking examinations under the said four preceding sections, or under any rule or order for taking an oral examination of an interrogated party as aforesaid, and he is hereby required to make, if need be, a special report to the court touching such examination, and the conduct or absence of any witness or other person thereon or relating thereto; and the court is hereby authorized to institute such proceedings, and make such order or orders upon such report as justice may require, and as may be instituted and made in any case of contempt of the court; and the costs of every application for any of the said rules or orders, and of the rules and orders and the proceedings thereon, shall be in the discretion of the court or a judge.

Report of judge or commissioner.

Costs of applications to be discretionary.

22. Either party in any civil action may exhibit to the adverse party or his attorney, any written or printed document to be used at the trial of the cause, and require him within eight days to enter into a rule to admit the same; and if the party so required shall neglect or refuse so to do, and the judge before whom the issue is tried shall be of opinion that the instrument proved was necessary to support the cause of the party producing it, the party so neglecting or refusing shall be liable to pay the fees of the witnesses necessary for proving the same.

Written or printed documents may be exhibited for admission; notice when and how given; Costs in case of refusal.

23. No witnesses fees shall be allowed in any case within the preceding section, to a party who shall have adduced in support of a issue, of which it was incumbent on him to approve the affirmative, any written or printed document which shall not have been exhibited a reasonable time before the trial or inquiry to the opposite party, unless sufficient cause shall be shewn on taxation, why the notice could not have been given.

Costs of proof of documents to be disallowed when party neglects to exhibit.

24. No charge for preparing to prove any such document incurred before the service of the notice, or after an offer by the adverse party to admit the same, shall be allowed, except those charges necessarily incurred in consequence of some act of the adverse party, after the service of notice and before the offer of admission.

What costs of proof of documents to be allowed, and what not.

25. In case of written documents exhibited as aforesaid and not admitted, if the court or a judge who tried the cause or the judge who shall tax the costs, shall be of opinion on hearing the parties, that the written documents were not required on the trial, and that the party producing or proving them had not reasonable ground for believing they would be required, the party proving the document shall pay the costs thereof; whatever may be the result of the cause.

In case documents were not requisite on trial, party proving them to pay the costs.

CHAP. 135.

If court think party who declined to admit documents had just grounds, costs to be costs in cause.

Proclamations, treaties, judgments, affidavits, &c., in what cases admitted as evidence, &c., how proved.

26. Notwithstanding such written document may have been required, if the court or the judge who tried the cause or the judge who may tax the costs, shall be of opinion on hearing the parties, that the party declining to admit such document had reasonable and just grounds for declining, such party shall not be liable for the costs of proving the written documents absolutely and in any result of the cause, but such costs shall be costs in the cause subject to the ordinary rules.

27. All proclamations, treaties, and other acts of state, of any foreign state, or of any British colony, and all judgments, decrees, orders, and other judicial proceedings of any court of justice in the United Kingdom of Great Britain and Ireland, or in any foreign state, or in any British colony; and all affidavits, pleadings, and other legal documents, filed or deposited in any such court, may be proved in any court of justice, or before any person having, by law or by consent of parties authority to hear, receive and examine evidence, either by examined copies or by copies authenticated as hereinafter mentioned, that is to say: if the document sought to be proved be a proclamation, treaty, or other act of state, the authenticated copy to be admissible in evidence, must purport to be sealed with the seal of the foreign state or British colony to which the original document belongs; and if the document sought to be proved be a judgment, decree, order or other judicial proceeding of any British, foreign, or colonial court, or an affidavit, pleading, or other legal document, filed or deposited in any such court, the authenticated copy, to be admissible in evidence, must purport to be sealed either with the seal of the said British, foreign, or colonial court to which the original document belongs, or in the event of such court having no seal, to be signed by the judge, or if there be more than one judge, by any one of the judges of the said court, and such judge shall attach to his signature a statement in writing on the said copy, that the court whereof he is a judge, has no seal; but if any of the aforesaid authenticated copies shall purport to be sealed or signed as hereinbefore respectively directed, the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence, without any proof of the seal where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement.

Documents admissible in evidence in England without proof of signature, &c., admissible here.

28. Every document which, by any law now in force or hereafter to be in force, is or shall be admissible in evidence of any particular in any court of justice in England, or Wales, or Ireland, without proof of the seal or

stamp, or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same, shall be admitted in evidence to the same extent and for the same purposes, in any court of justice in this province, or before any person having therein, by law or by consent of parties, authority to hear, receive, and examine evidence, without proof of the seal, or stamp, or signature authenticating the same, or of the judicial or official character of the person appearing to have signed the same. CHAP. 135.

29. Copies of any document, writing, or proceeding, filed in any court in this province, shall be received as evidence to the same extent as the original—provided such copies be certified under the seal of the court, or by the proper officer under his hand. Certified copies of papers filed in court admissible as evidence.

30. All affidavits for the purpose of holding persons to bail in this province, or having relation to any judicial proceeding in any court of justice therein, purporting to be made before a judge of any court of justice in the United Kingdom, or in any foreign state, or in any British colony, if in other respects conformable to law and the practice of the court in which they are designed to be used, may, notwithstanding they are made before a judge of a British, foreign, or colonial court, be received and acted upon, and shall have the same effect as if made before a judge or other lawful authority in this province; provided the same purport to be sealed with the seal of the British, foreign, or colonial court, before one of the judges of which they purport to be made, or in the event of such court having no seal, provided the judge whose name is subscribed thereto, shall have attached to his signature a statement in writing, on the affidavit, that the court whereof he is a judge, has no seal; but if any such affidavit shall purport to be sealed and signed, or to be signed, without being sealed, as hereinbefore respectively directed, the same shall be respectively received and acted upon as aforesaid, and admitted in evidence in every court of this province, without any proof of the signature of the judge and seal of the court, where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are alone required, or of the judicial character of the person appearing to have made such signature, or signature and statement respectively. Affidavits to hold to bail made abroad.

Declarations now or hereafter made in conformity with, and which shall have legal effect and operation in the place where the same may be made, under and by virtue of an act of the imperial parliament, passed in the fifth and sixth years of the reign of his late majesty King William the fourth, chapter sixty-two, relating to the abolition of oaths in certain cases, and of any act in amendment thereof, shall have the same operation and effect in this Declarations having legal effect where made, to have the same effect here.

CHAP. 135. province as if authenticated under oath before the same officers before whom the declaration had been made, and if these officers had been authorized to administer such oath.

Acts, deeds, declarations, &c., having legal effect in Great Britain, &c., to have the same here.

Acts, deeds, evidence, acknowledgments, and declarations, now or hereafter done, made, taken, or proved in Great Britain or Ireland, or any of her majesty's possessions, with those forms of authentication and proof which shall be the legal mode of proof and authentication in those places, shall have the same force and effect in this province as if sworn to before the same persons or officers, by and before whom the proof and authentication may be made, and as if those persons or officers had power to administer an oath.

Proof of registry of British ships.

31. Every register of, or declaration made in respect of, any British ship, in pursuance of any of the acts relating to the registry of British ships, may be proved in any court of justice, or before any person having, by law or by consent of parties, authority to hear, receive and examine evidence, either by the production of the original, or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having the charge of the original, and which person is hereby required to furnish such certified copy to any person applying at a reasonable time for the same, upon payment of the sum of twenty cents; and every register or copy of register, and also every certificate of registry granted under any of the acts relating to the registry of British vessels, and purporting to be signed as required by law, shall be received in evidence in any court of justice, or before any person having by law or by consent of parties, authority to hear, receive, and examine evidence, as presumptive proof of all the matter contained or recited in such register, when the register, or such copy thereof as aforesaid is produced, and of all the matters contained or recited in, or endorsed upon, such certificate of registry when such certificate is produced.

Punishment for giving false certificate. §

32. If any officer authorized or required by this chapter to furnish any certified copies or extracts shall wilfully certify any document as being a true copy or extract, knowing that the same is not a true copy or extract, [*as the case may be,*] he shall be guilty of a misdemeanor, and be liable upon conviction to imprisonment for any term not exceeding three years.

Punishment for forging documents referred to in this chapter.

33. If any person shall forge the seal, stamp or signature of any document in this chapter mentioned or referred to, or shall tender in evidence any such document with a false or counterfeit seal, stamp or signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall, on conviction, be liable to imprisonment for any term not exceeding three years nor less than

one year; and whenever any such document shall have been admitted in evidence by virtue of this chapter, the court or person who shall have admitted the same may, at the request of any party against whom the same is so admitted in evidence, direct that the same shall be impounded and kept in the custody of some officer of the court or other person, for such period, and subject to such conditions as to the said court or person shall seem meet; and every person who shall be charged with committing any offence under this chapter may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed in the county, district or place in which he shall be apprehended or be in custody; and every accessory before or after the fact, to any such offence, may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence laid and charged to have been committed in any county, district or place in which the principal offender may be tried. CHAP. 135.

34. A copy of any grant of lands, or documents or any proceedings in her majesty's council respecting the titles of lands, or filed in the provincial secretary's office, certified by the provincial secretary or clerk of the council, shall be received as evidence to the same extent as the original. Certified copies of grants, &c. admissible as evidence.

35. A copy of any grant from the crown, or of any deed from the books of registry, certified under the hand of the registrar, or proved to be a true copy taken therefrom, shall be received as evidence in the absence of the original, if it shall be made to appear to the court, by affidavit, that such original is not in the possession or under the control of the party, and that he has enquired for, and been unable to procure the same. Certified copy of deed may be received as evidence.

36. The probate of a will, or a copy thereof, certified under the hand of the judge or registrar of probate, or proved to be a true copy of the original will when such will has been recorded, shall be received as evidence of the original will in all causes; but the court may, upon due cause shewn upon affidavit, order the original will to be produced in evidence, or may direct such other proof of the original will as under the circumstances may appear necessary or reasonable for testing the authenticity of the alleged original will and its unaltered condition, and the fidelity of the prepared copy. Probate of will, or certified copy may be received as evidence.

This section shall apply to wills and the probate and copies of wills proved elsewhere than in this province; provided that the original wills shall have been deposited and the probate and copies granted in regularly constituted courts having jurisdiction over the proof of wills and administration of intestate estates or the custody of wills. To apply to wills regularly proved abroad.

37. A party intending to avail himself of the two preceding sections must give notice in writing of such his Notice to be given to opposite party.

CHAP. 135. intention to the opposite party, at least ten days previous to the trial, with a schedule of the deeds or wills so intended to be given in evidence, and the books wherein the same are recorded; but the judge may dispense with such notice if he be satisfied that no injustice has been done by the want thereof. The certificate of registry endorsed on any deed, docket of judgment or attachment, and signed by the registrar, shall be taken and allowed in all courts as evidence of the registry.

Certificate of registry of deeds, &c., to be received as evidence of registry.

Copy of grant.

38. A copy of any duplicate original of a grant or of the registry of any grant, certified by the commissioner of crown lands, or by the registrar of deeds of any county where such grant is recorded, shall be received in evidence.

Plans certified by prothonotary.

39. A certificate of the prothonotary at Halifax, on the plan of any township returned under the thirty-first section of chapter one hundred and thirteen of the revised statutes, second series, "of the registry of deeds and incumbrances affecting lands," shall be presumptive evidence that the same is the original plan which it is alleged to be in such certificate; and such plan shall thereupon be received in evidence as such.

Proof of instruments.

40. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto.

Proof by comparison of handwriting.

41. Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine, shall be permitted to be made by witnesses, and such writings and the evidence of witnesses respecting the same, may be submitted to the court and jury as evidence of the genuineness or otherwise, of the writing in dispute.

Witness not incompetent from crime or interest.

42. No person shall be an incompetent witness by reason of incapacity from crime or from interest.

Competent witnesses.

43. On the trial of any issue joined, or of any matter or question, or on any enquiry arising in any suit, action, or other proceeding in any court of justice, or before any person having by law or by consent of parties authority to hear, receive and examine evidence, the parties thereto, and the person in whose behalf any such suit, action, or other proceedings, may be brought or defended, and the husbands and wives of the parties thereto, and the person in whose behalf any such suit, action, or other proceeding may be brought or instituted, or opposed or defended, including the reputed father in bastardy causes, and the defendant in causes of petty trespass and assault, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *viva voce* or by deposition according to the practice of the court, on behalf of either or any of the parties to the suit, action, or other proceeding.

44. But nothing herein contained shall render any person who, in any criminal proceeding, is charged with the commission of any indictable offence, or any offence punishable on summary conviction, other than those mentioned in preceding section, competent or compellable to give evidence for or against himself, or shall render any person compellable to answer any question tending to criminate himself; and nothing herein contained shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband in any criminal proceeding, or in any proceeding instituted in consequence of adultery.

CHAP. 135.

Incompetent witnesses.

45. No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage.

Divorce &c.
See *judicial*
1866-*cap 11*
see 11-
Communications of husband to wife, &c. not to be disclosed.

46. Nothing in the three next preceding sections, shall apply to any action, suit, proceeding or bill, in any court of common law or court of marriage and divorce, instituted in consequence of adultery.

Not to apply to actions brought in consequence of adultery.

47. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall in the opinion of the judge, prove adverse, contradict him by other evidence, or by leave of the judge prove that he has made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion, must be mentioned to the witness and he must be asked whether or not he has made such statements.

Party producing witness not to impeach his credit by evidence of bad character.

May contradict him by other evidence.

48. If a witness upon cross examination as to a former statement made by him relative to the subject matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it, but before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion, must be mentioned to the witness and he must be asked whether or not he has made such statement.

Evidence of inconsistent statement of witness, when to be received.

49. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shewn to him, but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him: provided always that it shall be competent for the judge at any time during

Examination of witness as to previous statement in writing.

CHAP. 135. the trial to require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he shall think fit.

Examination of witness relative to his conviction of crime.

50. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanor; and upon being so questioned, if he either deny the fact or refuse to answer, it shall be lawful for the opposite party to prove such conviction, and a certificate containing the substance and effect only, (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the clerk of the court or other officer having the custody of the records of the courts where the offender was convicted, or by the deputy of such clerk or officer, (for which certificate a fee of one dollar and no more shall be demanded and taken) shall upon proof of the identity of the person, be sufficient evidence of the conviction, without proof of the signature or official character of the person appearing to have signed the same.

Subpoena may be issued by justice of peace when witness resides more than five miles distant.

51. Where a witness in a cause resides more than five miles from the place where the trial is to be had, a justice of the peace may issue a subpoena for such person to attend at the trial thereof, and the same shall be in the usual form of a justice's subpoena, with the necessary alterations.

Witness not obliged to attend, &c., until legal fees are tendered.

52. No person shall be obliged to attend or give evidence in any cause before any court, judge, commissioner, master, or arbitrator, or other person authorized to take his evidence before he is tendered his legal fees for such attendance and necessary travel.

Judge's testimony, how taken when necessarily absent from the county.

53. The testimony of a judge of the supreme court may be taken before any other judge or a commissioner, in the same manner as in the case of a witness about to leave the province; and the testimony may be used on the trial though the judge be not out of the province, if he shall be necessarily absent from the county on official business.

Affirmation.

54. If any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling from alleged conscientious motives, to be sworn, it shall be lawful for the court or judge, or other presiding officer, or qualified persons to take affidavits or depositions, upon being satisfied of the sincerity of such objections, to permit such person, instead of being sworn, to make his solemn affirmation or declaration, in the words following, videlicet:

"I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful; and I do solemnly, sincerely, and truly affirm and declare, &c."

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

55. If any person makin gsuch solemn declaration or affirmation shall wilfully, falsely, and corruptly affirm or declare any matter or thing which, if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such person so offending shall incur the same penalties as by the laws of this province are or may be enacted or provided against persons convicted of wilful and corrupt perjury.

CHAP. 136.

Penalty for affirming falsely.

56. Every court, judge, justice, officer, commissioner, arbitrator, or other person now or hereafter having by law or by consent of parties, authority to hear, receive and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively, and to administer an affirmation to such of them as are exempted from taking an oath, and shall attest their having administered such oath or affirmation by their respective signatures.

Parties empowered to administer oaths, &c.

57. Any person examined, or making deposition or affirmation, or giving answers or evidence under authority of this chapter, who shall in his examination, deposition, affirmation, answers or evidence, wilfully and corruptly give any false testimony, or wilfully and corruptly pervert or suppress the truth, shall be, and shall be deemed and taken to be, guilty of wilful and corrupt perjury.

Person giving false testimony guilty of perjury.

58. Parties to a suit when entitled or compellable to be examined, shall be included under the term witnesses, and be within the meaning and object of this chapter. The term "commissioner" when used in this chapter shall include commissioners appointed for taking affidavits, and also commissioners and any other persons specially authorized under this chapter to take examinations, depositions, affirmations or answers.

Definition of terms "witnesses."

"Commissioners."

59. In all cases of contempt by disobedience of any rule or order made under authority of this chapter, any judge may take cognizance of such contempt and issue attachment or other process of contempt and decide thereon, subject to appeal to the court as in cases of appeal from a judge at chambers; and nothing herein shall abridge the jurisdiction of the court over such contempts.

Contempt of orders, &c., how treated.

CHAPTER 136.

Amended 1865.

OF JURIES.

Cap 8.

1. All persons not hereinafter exempted, or who may not otherwise by law be exempted, who shall have resided twelve months within the county, and shall hold a freehold

Qualification of grand jurors.

CHAP. 136. estate within the same, if within the county of Halifax of the yearly value of one hundred and twenty dollars, and if in any other county of the yearly value of sixty dollars, or shall be possessed of a personal estate, if within the county of Halifax of the value of two thousand dollars, and if in any other county of the value of twelve hundred dollars, shall be qualified to serve as grand jurors for such county.

Qualification
of petit jurors.

2. All persons not hereinafter exempted, or who may not otherwise by law be exempted, whether liable to serve as grand jurors or not, who shall have resided twelve months within the county, and shall own property within the county to the value of eight hundred dollars, shall be qualified to serve as petit jurors for such county.

Persons ex-
empted from
serving on
juries; no per-
sons liable to
serve oftener
than once in
three years, ex-
cept in special
cases.

3. The members of the executive and legislative councils and of the house of assembly, and the officers thereof while in session, the receiver general, the financial secretary, and the secretary of the province, the surveyor general of crown lands, and the clerks employed in their several offices, the registrar of deeds, the officers of her majesty's courts, justices of the peace, members of the corporation of the city of Halifax, the officers composing the staff of the army, the clerks belonging to the several departments of the army, the officers and clerks belonging to and laborers employed in the naval yard, naval hospital establishment, the victualling establishment, or her majesty's ordnance, or the departments of the customs, or excise, or post office, or provincial railroad; ministers, attornies, physicians, surgeons, keepers of light houses, millers, licensed ferrymen, teachers of academies, licensed school-masters, mail couriers, engine men and firemen, sworn electric telegraph operators, persons under twenty-one and above sixty years of age, and the cashiers or accountants and tellers actually employed in the several banks, shall be exempted from serving on juries; and no person shall be liable to serve on grand or petit juries more than once in three years respectively, unless in cases where a new summons shall be issued for jurors to supply the place of jurors not attending as hereinafter directed.

Committee for
preparing and
revising jury
lists, how ap-
pointed.

4. The sessions shall once in every alternate year from among their number appoint a committee of not less than three justices, resident in different sections of the county or district, for the purpose of preparing and revising the grand and petit jury lists of the county or district, and shall from time to time appoint others to act in the room of such as may die or be removed.

Duty of com-
mittee: access
to public pa-
pers free.

5. The committee, having been sworn, shall have free access to all public papers and accounts, and shall prepare and revise the lists, and shall transmit copies thereof to the prothonotary.

6. The lists shall be valid if a majority of the justices appointed shall act in the compilation or return thereof. CHAP. 136.

Lists valid if majority of committee act.

7. The list of grand jurors shall contain all the christian names, or one or more of the initials thereof, and the surnames, of all those qualified to serve as grand jurors, their places of residence, trades, callings or employments, and whether senior or junior, or by any other appellation by which they may be usually called or known.

Lists of grand jurors to contain names, additions. &c.

8. The list of petit jurors shall contain all the christian names or one or more of the initials thereof, and the surnames, of all those qualified to serve either as grand or petit jurors, their places of residence, trades, callings or employments, and whether senior or junior, or by any other appellation by which they may be usually called or known.

Lists of petit jurors, like particulars.

9. The court of general sessions in every county or district of this province, shall, from time to time, as they may think requisite, fix and determine what number of such persons, qualified to serve as grand jurors for each of the townships, settlements, or electoral districts, in the county or district, shall be annually summoned to serve as such jurors.

General sessions to determine the number of jurors to be summoned annually.

10. When the lists of jurors shall have been completed by the committee, a copy alphabetically arranged shall be given by them to the clerk of the peace, and another copy to the prothonotary, who shall forthwith after post up a copy of such list in their offices, respectively, and keep the same posted up for at least one month; and such committee, or a majority thereof, shall meet in the county or district court house, within two months from the last day of the sessions at which they were appointed, to revise such lists, a notice of the time of holding such meeting to be given on such lists so posted up, and shall hear and decide upon objections to the correctness of such lists, either as to names appearing thereon, or as to names omitted therefrom.

Copies of jury lists to be posted; notice to be given thereon, &c.; errors or omissions in.

11. The committee shall thereupon forthwith furnish the prothonotary with a copy of such lists so corrected and signed by them, and the lists shall be held valid, notwithstanding the omission of persons qualified or the insertion of the names of persons not qualified as grand or petit jurors, respectively.

Corrected lists to be furnished to prothonotary, effect of omissions, &c.

12. The justices, in hereafter revising the jury lists, shall make a list of the names of those who, by reason of death or exemption, are to be struck out of the jury lists heretofore returned; and also a list of the names to be added to such lists, and the same upon being duly returned shall be struck out and added accordingly; and the same shall be considered a full revising of such jury lists, but the sessions or a judge of the supreme court may at any

Lists of persons to be struck off or added.

CHAP. 136. time it shall be deemed advisable, direct the revising committee to make out and return full and fresh lists of jurors.

Lists to be posted in prothonotary's office; names drawn to be marked.

13. The list of jurors shall be kept posted up in the prothonotary's office, and when the juries are drawn to serve for each year, the prothonotary shall mark opposite to the name of each person the year he was drawn to serve and whether as a grand or petit juror.

Remuneration to committee revising lists.

14. The grand jury, in general sessions, shall vote annually a compensation of one dollar and fifty cents to each of the committee of justices who revise the lists as aforesaid, with travelling fees at the rate of five cents per mile coming and returning; and ten cents per folio for copies of the lists furnished by them.

Inserting names of incompetent or omitting competent persons in lists, &c.

15. Any justice appointed to revise such lists, who shall knowingly put any person thereon who is not qualified, or omit any person who is qualified, or who shall wilfully neglect his duty in any other respect, shall be liable to a penalty of not less than forty nor more than two hundred dollars.

Where jurors have not been drawn for the current year.

16. In any county or district where grand or petit jurors have not been drawn for the current year, a special sessions may appoint a committee of justices to revise the lists of jurors, and after the same are revised in manner directed by this chapter, and returned by the committee to the prothonotary, he, together with the sheriff or his deputy, shall forthwith draw a jury or juries, as may be required, and the prothonotary shall issue *venires* for summoning the same; and such lists need not be drawn in open court, or signed by a judge of the supreme court.

Form of revised lists.

17. Revised lists of grand and petit jurors, hereafter to be prepared, shall be in the forms of the schedule hereto annexed.

Designation of jurors to be written upon tickets, &c.

18. The designations of jurors shall hereafter be written upon the tickets containing their names, and also upon the several panels and *venires* in the same way as they are upon the revised lists.

Revising committee to be chosen biennially, duration of.

19. The committee of justices to revise the lists shall be chosen biennially, but shall continue in office until their successors are appointed.

Lists of petit jurors for Halifax sessions, how prepared.

20. The committee appointed for the county of Halifax shall also prepare and annually revise a list of those persons not qualified to serve as grand or petit jurors, and shall return such list, alphabetically arranged, to the clerk of the peace, which list shall be the list from which the petit juries for the sessions at Halifax shall be drawn; and such petit juries shall be drawn, summoned and sworn in the same manner, and subject to the same rules and penalties as petit juries in the supreme court.

What distance from Halifax exempt.

21. No person living more than fifteen miles from the city of Halifax shall be placed on any list for the county of Halifax.

22. The inhabitants residing within the district of Saint Mary's shall alone be liable to attend as jurors at the sessions held in the district, and they shall not be liable to attend as jurors at the sessions held at Guysborough; but nothing in this section shall be construed to exempt such persons from their liability to attend as jurors at the supreme court at Guysborough.

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Liability of persons residing within Saint Mary's district to serve as grand jurors.

23. The clerk of the peace for the district of Saint Mary's shall draw from the list a grand jury on the last day of the sittings or term of the sessions, to be summoned to attend the next term or sittings of the court.

Saint Mary's district grand jury, how drawn for the sessions.

24. The prothonotary, as soon as possible after the return of such lists, shall have the names of all persons mentioned therein written on distinct and separate pieces of paper, so folded as to conceal the names thereon, and shall place the same in separate boxes; those names placed on the grand jury list being put into the grand jury box, and those on the petit jury list into the petit jury box.

Names of grand and petit jurors to be placed by prothonotaries in separate boxes.

25. During the sitting of the court on the last term in each year, the prothonotary associated with two justices appointed by the judge shall draw from the grand jury box in open court, and before drawing the petit jury, the number of names fixed and determined by the sessions or by the committees thereof, to serve as grand jurors for each township or settlement in such county or district during the ensuing year, being twenty-four in all, and shall thereupon make a list of such names as shall first be drawn, setting aside the names of those who have served within two years then next preceding, which list shall be signed by the presiding judge; and the prothonotary shall issue writs of *venire facias* for the summoning of such jurors, and shall deliver the same to the sheriff at least twenty days before the first term or sittings of the supreme court or general sessions at which such grand jury shall be bound to attend, and the sheriff shall thereupon cause such jurors to be summoned at least four days before the time appointed for their attendance.

Grand jury, how drawn and summoned.

26. The prothonotary for the county of Guysborough, immediately after drawing the grand jury for the supreme court, shall draw in the usual mode from the apartments of the grand jury box allotted to those portions of the county not included in the district of Saint Mary's, a grand jury to attend at the sessions in Guysborough, who shall be summoned in the usual manner, and shall return the names of such grand jury into the box; such drawing shall not exempt them from serving as grand jurors at the supreme court, but they shall not be liable to serve as jurors at the sessions oftener than once in three years.

Grand jury for Guysborough sessions, how drawn, &c.

27. When above twelve of the grand jury shall assemble in court for the first time in each term, they shall choose a foreman, who shall be foreman of such jury for

Foreman of grand jury, how chosen.

CHAP. 136. the term, and such foreman and jury shall be sworn in the usual manner.

Petit jurors,
how drawn and
summoned.

28. At each term of the supreme court the prothonotary shall, in open court, draw from the petit jury box a number of names to form the panel of petit jurors for the ensuing term, and setting aside the names of all those who shall have served either as grand or petit jurors within two years then next preceding, or who shall then be serving or drawn as grand jurors, shall prepare a list containing the names of those first drawn, and have the same signed by the presiding judge, and shall issue writs of *venire facias* for the summoning thereof, and deliver the same to the sheriff at least twenty days before the ensuing term; and the sheriff shall cause such jurors to be summoned at least four days before the time appointed for their attendance.

29. The associated justices may, in their discretion, before proceeding to draw any jury, require the prothonotary in their presence to examine and compare the slips in the jury boxes with the list in his possession.

30. When twelve do not concur, a majority of two-thirds of the grand jurors present at any general sessions of the peace shall have power to make presentments and transact all other county business, provided that no grand jury shall be composed of less than thirteen members.

31. In any civil cause, information, or indictment for a misdemeanor, the court, upon motion, may order a special jury for the trial thereof upon sufficient cause shewn on affidavit, and the court may order a special jury for the assessment of damages upon similar motion in cases where the assessment is to be made before them, and the judge may, at the final taxation of costs, order which party shall pay the cost of such special juries, including the costs of travel of such jurors.

32. When special juries are ordered the prothonotary shall draw thirty-six names from the petit jury box in civil cases, and forty-eight in cases of information or indictment for misdemeanor, setting aside the names of any persons then serving as grand jurors; and the number having been reduced to eighteen in civil cases, and to twenty-four in cases of information or indictment, in the usual manner, they shall be summoned at least forty-eight hours before the time appointed for their attendance.

33. There shall be returned a panel of twenty-four petit jurors to each short term in the county, and two panels of twenty-four petit jurors each, to each extended term in those counties where the term can be so extended. In Halifax the panel shall consist of thirty-six jurors.

34. There shall be two panels of jurors drawn and summoned for each sittings at Halifax, the first whereof shall be summoned for and bound to attend on the first

Majority of two
thirds of grand
jurors may
make present-
ments.

Proviso.

Court may
order special
jury, upon
motion.

Special juries,
how drawn, &c.

Petit juries;
panels of, mem-
bers of.

Petit juries for
sittings at Hali-
fax.

*Recorded
65 Capl. Sec 8.
Ok to be associa-
ted with law Justice
me as in Sec
5. - also
in direction
drawing special
juries
Halifax.*

Wednesday of such sittings, and thence until the second Wednesday thereof, and the other shall be summoned for and bound to attend on the second Wednesday thereof, and thence until the termination of the sittings, except at the Michaelmas sittings, when the first panel shall again attend on the third Wednesday for a week, and the respective panels shall so continue to attend by alternate weeks until the termination of the sittings. CHAP. 136.

35. At each term of the supreme court at Halifax, the prothonotary in open court, in addition to drawing the number of names as by the last section is directed to form the ordinary panel of petit jurors, shall also draw from the petit jury box a number of names to form a second panel of thirty-six petit jurors, for the trial of criminal causes at the then ensuing sittings, and the same course shall be pursued in preparing and signing the lists thereof, and in issuing and delivering writs of *venire facias* therefor, and in summoning such jurors, as is directed with respect to the first mentioned panel of petit jurors in and by the next preceding section. All jurors required to attend such sittings shall be subject to the penalties for non-attendance by this chapter established.

Second panel for Halifax sittings—how drawn, summoned, &c.

36. There shall be two panels of jurors drawn and summoned for those counties in which the term extends beyond one week, except the counties of Antigonishe and Queens; the first of which panels shall be summoned for and bound to attend on the first day of the term, and thence until the succeeding Monday, and the other shall be summoned for and bound to attend on the first Monday of such term, and thence until the termination of the sittings, except in the county of Pictou, where the first panel shall be summoned for and bound to attend on the first day of the term and thence until the succeeding Thursday, for which day the second panel shall be summoned and bound to attend thence until the termination of the sittings.

What counties to have each two panels at their long terms respectively.

37. A jury impanelled for the trial of a cause which shall go over the time specified for the attendance of such jury, shall not on that account be discharged.

Jury impanelled when not to be discharged.

38. The whole panel of jurors shall be called on the first day on which they are bound to attend, and before any cause to be tried by a jury shall be proceeded in, and all jurors not then in attendance shall be fined.

Panel to be called on the first day, absent jurors to be fined.

39. When the second panel shall not have been called upon to serve as a jury, their names shall be returned into the boxes as if not drawn.

Second panel, when not called to be returned as not drawn.

40. If a sufficient number of grand or petit jurors do not attend, or if it is probable that a sufficient number may not attend, the names of those who do not attend shall be returned to the box as if they had not been drawn, and the prothonotary shall draw the names of others liable to serve, and shall cause the sheriff immediately to summon

Names of jurors not attending to be returned to the box, and others to be summoned forthwith.

CHAP. 136. those whose names have been so drawn to attend forthwith.

Grand jurors
finable for non-
attendance.

41. Any grand juror who, having been duly summoned, shall not attend, shall be fined not less than two nor more than eight dollars for each day's neglect.

Fine for ab-
sence of juror.

42. Any petit or special juror who shall not answer to his name when called, and by the affidavit of the sheriff shall appear to have been duly summoned, shall forfeit his day's pay, and for each day's absence shall pay a fine of two dollars.

Fines, how le-
vied; how,
when, and to
whom payable.

43. All fines for non-attendance of jurors shall be levied by warrant of distress; such warrant shall be made out and delivered by the prothonotary to the sheriff immediately after the calling of the jury each day, or at such other time as the court may order; and the sheriff shall proceed at once to enforce the same, and shall forthwith return to the prothonotary a statement of all fines received by him, which statement shall also set forth the reasons why such fines, if any, have not been collected; and the sheriff shall at the same time pay over to the prothonotary the full amount by him received, deducting five per cent, and the prothonotary shall immediately lay such statement before the court, if then sitting, or otherwise at the next term thereof in the county; and he shall also at the end of each term pay over the amount of fines collected, deducting five per cent, to the county treasurer for county purposes, and shall take his receipt therefor, which shall be laid before the court at its next sitting.

Jurors, number
of in civil cases

44. Every petit or special jury for the trial of civil causes, inquisitions and issues, bastardy cases, appeals, and certiorari, shall consist of nine persons, of whom seven, after at least four hours deliberation, may return a verdict; and the petit jury for criminal trials, except as hereinbefore stated, shall consist of twelve persons who must be unanimous in their verdict.

Jurors not to be
deprived of
food, &c.

45. The practice of keeping a jury without meat, drink, or any other comfort until they agree upon their verdict, is abolished.

Pay of jurors.

46. Each petit and special juror and talesman shall be entitled to receive and be paid the sum of fifty cents per day, for his actual attendance as a juror at the supreme court, and every petit and special juror, also ten cents per mile for every mile he shall necessarily travel from his place of residence to the court house; such actual attendance and distance to be ascertained by the oath of the juror.

List of jurors to
be prepared,
with their at-
tendance and
travel; to be
paid out of
county funds.

47. The prothonotary in each county shall, on the last day of the sittings of the supreme court in each term, and of the sittings of such court in Halifax, and also, at the end of the first week of the sittings in those counties where the sittings can be extended, prepare and certify a

list of the jurors who actually attended such court, with the number of days attendance, and the actual travel of each juror respectively, and the amount to which each juror is entitled, and shall deliver such list to the presiding judge, who shall certify the same; and the treasurer shall forthwith thereupon pay, out of the county funds, to each juror, the amount which such juror appears entitled to receive upon such list. CHAP. 136.

48. To provide a fund towards the payment of jurors under this chapter, the following fees shall be paid by plaintiffs to the prothonotary, and by him into the county treasury, viz.: on the issuing of writ of mesne process, except in summary and subsummary suits, fifty cents, and on the swearing of every jury six dollars; the above fees to be taxed and allowed, and included in the costs in the cause. Fund to be raised by fees.

49. The county treasurer shall keep an account of all receipts and payments under the two last sections, such account to be laid before the sessions with his other accounts. Accounts of receipts and payments.

50. The court or presiding judge may relieve any juror from such fine, in whole or in part, on sufficient reason being shewn on oath, which, if in writing, may be made before a justice of the peace. Jurors, how relieved from fines.

51. In all criminal trials four jurors may be peremptorily challenged on the part of the crown, and eight jurors on the part of the prisoner or defendant. Challenge on part of crown. }

52. In case of the illness of a juror after he shall have been sworn in any civil cause, it shall be in the discretion of the presiding judge to allow the cause to proceed without him; and the verdict shall be valid, provided seven of the remaining jurors shall concur therein. Proceedings in case of illness of juror.

53. The court or presiding judge may amend the lists of jurors by striking out the names of persons not liable to serve, or inserting the true name or addition of any person therein improperly designated or described, or by adding the name of any qualified person brought to their knowledge; and the prothonotary shall keep a memorandum of all such amendments, and annually return the same to the clerk of the peace, to be laid before the revising justices. Amendment of jury lists provided.

54. The prothonotary shall cause the names of the special jurors to be written on distinct and similar pieces of paper, and having folded the same so as to conceal the names, and placed them in a box, shall proceed to draw the jury therefrom, and the nine or twelve, in civil or criminal cases respectively, whose names shall be first drawn, and who shall be in attendance, shall be the jury for the trial of the cause or assessment of damages. Special jury, how drawn and called on trial.

55. The prothonotary shall cause the names of the petit jurors to be written on distinct and similar pieces of paper, and having folded the same so as to conceal the names, and placed them in a box, shall, on the first cause being called, Petit juries, how drawn and called on trial.

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proceed to draw the jury therefrom, and the nine or twelve in civil or criminal cases respectively, whose names shall be first drawn, and who shall be in attendance, and shall not be challenged, shall be the jury for the trial of the cause; and when another cause shall be called, the prothonotary having returned into the box the names of those who have been challenged, or who have not appeared, shall proceed to draw the jury therefrom until all the names have been drawn, when the names of such as have served on previous juries shall be returned to the box, to be drawn in like manner.

Tales may be prayed by either party.

56. When a full jury shall not appear, or appearing shall be challenged, or otherwise prove deficient, a *tales de circumstantibus* shall, at the instance of either party in civil causes, and in all criminal causes except treason or murder, be awarded and returned immediately.

Challenges without cause allowed.

57. In all civil causes, informations, and indictments for misdemeanors, either party may peremptorily challenge, if in Halifax four, if in any other county three, of the jurors or talesmen.

Duties of prothonotary to be performed by clerk of peace in certain cases.

58. The duties imposed by this chapter on the prothonotary shall be performed by the clerk of the peace where necessarily devolving on him.

Oath of grand jurors.

59. The oath of grand jurors in sessions shall hereafter be as follows :

You do swear that you will well and faithfully discharge the duties devolving on you as [*foreman, or grand juror,*] for the county of ———, to the best of your knowledge and ability. So help you God.

SCHEDULE.

County of ———.

The return of revising magistrates, of persons qualified to serve as grand or petit jurors.

Township or settlement.	Christian and surname at full length, and whether senior or junior.	Trade, calling, or employment.	Appellation—by which known.

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CHAPTER 137.

OF THE RELIEF OF INSOLVENT DEBTORS.

Amended 1858. Cap. 4.
Justice allowed fees
 1. Commissioners for giving relief to insolvent debtors shall be appointed by the governor in council.

Commissioners appointed, how.

2. Where any person imprisoned upon any writ of mesne process, execution or attachment for non-payment of money, issuing out of the supreme court, shall desire to take the benefit of this chapter, he shall exhibit a petition to a judge of the supreme court, or to two commissioners, praying for his discharge. The petition shall be accompanied by a schedule of all the property, real and personal, of the debtor, of all debts due or growing due to him, and of all securities by him held, which might by any possibility be made available, or which might become assets in the hands of his representatives, and also, so far as the same can be obtained by the debtor, a statement showing the amount of his liabilities.

Prisoner to exhibit petition and schedule annexed.

3. The judge or commissioners shall thereupon forthwith issue a summons calling upon the creditor at whose suit the debtor is imprisoned, at a certain time or place to be therein named, to show cause why such prisoner should not be discharged.

Summons thereupon to issue.

4. True copies of the summons and schedule shall be served on the creditor, his attorney or agent, or where a debtor is imprisoned at the suit of the crown, on the attorney general, at least forty-eight hours before the time appointed for shewing cause; and where the creditor, his attorney or agent, or the attorney general, shall reside more than twenty miles from the place so appointed, twenty-four hours additional shall be allowed for every additional twenty miles. The service of such copies, if not admitted, must be proved on oath by the person serving the same, which oath may be administered by a justice of the peace, and a further time may be allowed for the examination, in the discretion of the judge or commissioners, where the creditor himself has not been served.

Copy of summons and schedule, how served; time from date of service till return to be proportioned to distance.

5. In cases where the insolvent debtor is imprisoned under process issued out of a court of justices of the peace, or that of any stipendiary magistrate, the notice required by the next preceding section may, in cases where the plaintiff is not resident in the county, be served upon the agent at whose instance the process was issued. If there be no agent within the county, and if the plaintiff's place of residence be out of the province or unknown, the notice may be left with the justice or stipendiary magistrate, whose name is first subscribed to the process, and the same shall be considered a service upon the plaintiff;

Service on agent where plaintiff non-resident, in cases out of justices court, &c.

CHAP. 137. but in the last case the notice shall be left with the justice or stipendiary magistrate at least ten days before the day named for bringing up the insolvent.

Oath to be administered to prisoner if required.

6. At the time appointed the judge or commissioners shall, if desired by the creditor, administer an oath to the debtor in the following form :

“I, A. B., do swear that I will true answer make to all such questions as shall be asked me on this examination.”

Order for discharge upon assignment made and oath taken; form of oath; confession may be required in case of mesne process.

7. The judge or commissioners shall give an order for the discharge of the debtor, unless in the cases hereafter provided for, upon the debtor's making an assignment to the creditor, in trust for the payment of the debt, of his real and personal property, upon his taking and subscribing an oath to the following effect :

“I, A. B., do swear that the schedule annexed to my petition contains a true account of all the real and personal estate which I or any person in trust for me at the time of my petition had, or now have, or may hereafter have, except the wearing apparel and bedding for me and my family, and the tools or instruments of my trade or calling, not exceeding forty dollars in the whole; and that I have not since my imprisonment or before conveyed in trust for myself, or otherwise except as in such schedule mentioned, any part of my property whereby to defraud any of my creditors. So help me God.”

The taking of which oath may be waived by the creditor; and in case of imprisonment under mesne process, if the judge or commissioners are satisfied of the existence and amount of the debt, the debtor shall sign a confession of judgment therefor, and shall do such other acts as the judge or commissioners shall direct.

Debtors at the suit of the crown, how discharged.

8. When a debtor is imprisoned at the suit of the crown, and the judge or commissioners are satisfied of the insolvency of such debtor, he or they shall certify the same, together with an inventory of all the property of the debtor, and the governor may thereupon by warrant under his hand and seal, order the attorney general to assent on behalf of her majesty to the discharge of the insolvent, either with or without an assignment of his property.

Prisoner may be remanded on affidavit.

9. If the creditor, or in his absence his attorney or agent, shall forthwith, in the presence of the judge or commissioners, make an affidavit in writing, stating that he has good reason to be dissatisfied with the account given, and believes that the debtor has not disclosed the whole truth, or has other property than that by him admitted, the judge or commissioners shall remand the debtor, and appoint another day for the further hearing of the matter, and shall on that day again meet and discharge or remand the debtor, or make such further order as the justice of the case may require.

10. When upon the examination of the debtor, or of any witnesses that may be produced on either side, and which witnesses shall be bound to attend on subpoena as in actions pending in the supreme court, the debt shall appear to have been fraudulently contracted, or any fraudulent circumstances have occurred in respect of such debt, or in respect of the delay of payment thereof, or in respect of the conduct of the debtor with regard to the disposition of his property, or in cases of tort where the judge or commissioners shall be of opinion that such tort was wilful and malicious, the judge or commissioners may remand the debtor to be confined without the privilege of jail limits, for such time under one year as he or they shall deem proper under the circumstances; at the end of which time the debtor shall be discharged on making the affidavit and assignment of his property before a judge, or any two commissioners.

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In cases of fraud, prisoner may be remanded for a period not exceeding one year, without privilege of jail limits.

11. Where the judge or commissioners shall remand the debtor for fraud, such judge or commissioners shall tax the fees of witnesses attending on behalf of the creditor, and if not paid, shall remand the debtor for such further period as he or they may deem right.

When remanded for fraud witnesses fees to be taxed against debtor.

12. Where the debtor is imprisoned under a *capias* or execution issued by a justice or justices of the peace, any two justices shall possess the same powers in respect to the relief of insolvent debtors as a judge.

Two justices may relieve in case of process issuing out of justices court.

13. In cases where the hearing shall be had before commissioners or justices of the peace, the debtor shall be entitled to an appeal; and if the creditor, or in his absence his attorney or agent, shall demand an appeal, and shall make an affidavit in writing that he is dissatisfied with the decision, and that the appeal is not made for the purpose of delay only, but that substantial justice may be done him therein, or to that effect, the commissioners or justices shall grant such appeal and remand the debtor.

Appeal to be had by either party.

14. The supreme court shall be the court of appeal, if it shall be sitting within the same county at the time the order appealed from was made, or if such sitting shall be held within ten days from the making of such order. When such shall not be the case, then any judge of the supreme court, if within such county; and in case a judge shall not be present, then a special sessions of the peace shall be the court of appeal. The special sessions shall be summoned by the prothonotary and be held within three days, and shall consist of any three justices of such county not concerned in the making of the order.

Supreme court, a judge thereof, or a special sessions, to be the court of appeal.

15. The court of appeal shall hear and determine such appeal, and make such orders therein from time to time as it shall deem proper, such orders being not inconsistent with this chapter.

Powers of the court of appeal.

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Papers to be returned to the supreme court.

Prisoner to be discharged by order.

Property of debtor liable for debt, after his discharge.

Sheriff's fees, who liable therefor on a discharge.

16. The judge, commissioners, justices, and court of appeal, shall return to the supreme court of the county all the papers connected with their proceedings on such applications and appeals.

17. Upon receiving an order to that effect from the judge, commissioners, justices or court of appeal, the officer in whose custody such prisoner shall be, shall discharge him therefrom as regards the suit expressed in the order.

18. Where any person shall be discharged under the provisions of this chapter, any property owned by him at the time of the judgment, or subsequently acquired, and not in the possession of a bona fide holder without notice, may nevertheless be levied upon for the debt under execution issued on the same judgment.

19. When any person shall be discharged under the provisions in this chapter the party at whose suit he has been committed to jail, shall be liable to pay the sheriff his fees for the service, return and travel necessary in serving the process, under which the party was arrested.

TITLE XXXVII.

OF ACTIONS RELATING TO REAL PROPERTY.

CHAPTER 138.

OF THE WRIT OF DOWER.

Widow entitled to sue for dower when not assigned within one month after demand.

Writ to be in the form heretofore used.

Damage may be assigned for withholding dower.

Form of writ of seisin.

Dower, how set forth.

1. When the heir or other person having the freehold shall not, within one month next after demand made, assign to the widow her reasonable dower, she may sue for and recover the same by writ of dower.

2. The writ of dower shall be, as near as may be, in the form heretofore used.

3. Upon judgment being given for the widow, reasonable damages shall be assigned to her from the time of the demand made.

4. Writs of seisin thereon shall be, as near as may be, in the forms heretofore used.

5. The officer to whom the writ is directed shall cause the dower to be set forth by five freeholders of the neighborhood, three of whom at least shall concur, who shall be sworn before a justice of the peace, to set forth the same impartially, without favor or affection, and as conveniently as may be.

6. Where no division can be made by metes or bounds, the widow shall be endowed in a special manner as of a third part of the rents or otherwise. CHAP. 139.

7. A woman endowed of lands shall not commit or suffer waste thereon, but shall maintain the buildings with the fences and appurtenances in good repair, during her term. Of special endowment, where property indivisible.
Waste not to be committed or suffered.

*Amended 1866 cap 16. sec 1. As
to sec 22 - of this
chapter*

CHAPTER 139.

OF THE PARTITION OF LANDS.

1. All persons holding lands as joint tenants, coparceners or tenants in common, may be compelled to divide the same, either by writ of partition at the common law, or in the manner provided in this chapter. Partition may be as at common law or under this chapter.

2. Any one or more of the persons so holding lands may apply, by petition to the supreme court for the county where the lands lie, for a partition of the same, and such court may cause partition to be made accordingly; and the shares of the petitioners shall be set off and assigned to them, and the residue of the premises shall remain for the persons entitled thereto, subject to a future partition among them if there is more than one person so entitled. Proceedings to be commenced by petition to supreme court.

3. Such petition may be maintained by any person who has an estate in possession, but not by one who is entitled only to a remainder or reversion. Petition, by whom maintained.

4. No tenant for any term of years, unless twenty years thereof at the least remain unexpired, shall maintain such a petition against any tenant of the freehold; but when two or more persons hold jointly or in common, as tenants for any term of years, either of them may have his share set off and divided from the others in the same manner as if they had all been tenants of the freehold. Who may maintain petition.

5. Such partition between two or more tenants for years shall continue in force only so long as their estates endure, and shall not affect the premises when they revert to the respective landlords or reversioners. Duration of partition as between tenants for years.

6. Every petition for a partition shall set forth the rights and titles, so far as known to the petitioner, of all persons interested in the premises who would be bound by the partition, whether they have an estate of inheritance, or for life, or years, and whether it be an estate in possession or in remainder or reversion, and whether vested or contingent; and if the petitioner holds an estate for life or years, the person entitled to the remainder or reversion after his estate shall be considered as one of the persons so Contents of petition; amendments to be allowed at any stage.

CHAP. 139. interested, and shall be entitled to notice accordingly; such petition or any subsequent proceeding had thereon may be amended at any time upon such terms as the court or a judge may impose.

Petition to be filed, a summons to issue and be served with a copy of petition; rule to plead, &c. as if it were a declaration.

7. The petition shall be filed in the same manner as a declaration, and a summons to appear and answer thereto shall be signed by the prothonotary, and a copy thereof with a copy of such petition, accompanied by a rule to plead and the usual notices, shall be served on each of the parties named in the petition as interested in the premises, if they shall be found within the province, the like number of days as required in ordinary writs.

Proceedings, where some parties are absent, &c.

8. If any of the persons so named as interested are absent from the province, or if there are persons interested in the premises, and who would be bound by the partition whose names are unknown to the petitioner, the court or a judge thereof shall order notice to be given to the persons interested who are so absent or unknown, by a publication of the petition or of the substance thereof, with the order of the court or a judge thereon, in one or more newspapers to be designated in the order, or by delivering to such absent party an attested copy of the petition and order, or in such other manner as such court or judge shall consider to be most proper and effectual.

Where a party fails to appear the court may order further notice.

9. If any person entitled to notice shall fail to appear, and if the service of the summons or other notice to him shall appear to the court to have been insufficient, the court or a judge may order such further notice as shall be thought proper.

Proceedings where it appears that a party out of the province has not had an opportunity of appearing.

10. If in any stage of the proceedings it shall appear to the court that any person interested, whether named in the petition or not, is out of the province, and has not had opportunity to appear and answer to the suit, it shall be continued from term to term, until sufficient time has been allowed to enable him to appear and answer thereto.

Guardians may be appointed.

11. The court or a judge may assign a guardian for the suit for any infant or insane person who is interested in the premises, in the same manner as a guardian is admitted for an infant plaintiff or defendant at common law.

Defendants may appear jointly or separately, and pleadings, &c., may be had as in other cases.

12. Any person interested in the premises of which partition is prayed for, may appear and answer to the petition, and may plead either separately or jointly with any other defendants, any matter tending to show that the petitioner ought not to have partition as prayed for, either in whole or in part; and the replication and further pleadings shall be conducted as in other actions until issue is joined, which shall be tried and determined as in other cases; all such pleadings to be filed and served in the same way as the pleadings in declaration suits, and notices of trial to be given in like manner.

13. If any person who is not named in the petition shall appear and plead as a defendant, the petitioner may reply that such person has no estate or interest in the lands described in the petition, and may pray judgment if he shall be admitted to object to the petition;—and the petitioner may in the same replication plead over in answer to such plea any other matter in like manner as he might have done if he had not disputed the defendant's right to appear.

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Replication where a party's right to appear and defend is contested.

14. If upon such a replication it shall appear that the defendant has no estate or interest in the lands, the matter of his plea or objection shall be no further inquired of.

Proceedings thereon.

15. If upon the trial of any issue of law or of fact it shall appear that the petitioner is entitled to have partition as prayed for, he shall recover his costs of such trial against the party who objected thereto, and shall have execution therefor in the usual form; but if such issue is found or decided against him, in whole or in part, the adverse party shall recover against him the costs of the trial and shall have execution accordingly, and judgment may notwithstanding be entered for the petitioner to have partition and to have assigned to him such part of the premises, if any, as he shall be entitled to.

Costs of trial, how regulated.

16. If the defendant shall make default, or if upon such trial it shall appear that the petitioner is entitled to have partition, whether for the share or proportion claimed in his petition or for a less share, a rule that partition shall be made shall pass, but the court shall have the same power of setting aside defaults and of granting new trials as in other cases.

Proceedings in cases of default; rule for partition thereon.

17. When such rule shall have passed, the court shall appoint three disinterested persons as commissioners, to make partition and to set off to the petitioners the shares belonging to them, which shall be expressed in the rule in that behalf.

Commissioners appointed to make partition under rule.

18. If there are several petitioners they may have their shares set off together, or the share of each one may be set off in severalty at their election.

Petitioners may have their shares set off jointly or separately.

19. The commissioners, before proceeding to the execution of their duties, shall be sworn before any justice, faithfully and impartially to perform the same; a certificate of which oath shall be made on the warrant by the person who administered it.

Commissioners how sworn.

20. The commissioners shall give sufficient notice of the time and place appointed for making the partition to all persons interested therein, who are known and within the province, that they may be present if they see fit.

Commissioners to give notice of time and place of partition.

21. The three commissioners shall meet for the performance of any of their duties, but the acts of any two of them shall be valid.

The three commissioners shall meet, but the acts of two to be valid.

22. When the premises of which partition is demanded,

Partition, how

CHAP. 139. are such as cannot be divided without damage to the owners, or when any specific part of the estate is of greater value than either party's share, and cannot be divided without damage to the owners, the whole estate, or the part thereof so incapable of division, may be set off to any one of the parties who will accept it, he paying or securing to any one or more of the others, such sums of money as the commissioners shall award, to make the partition just and equal. But the partition in such case shall not be established by the court until all the sums so awarded shall be paid to the parties entitled thereto, or secured to their satisfaction.

effected where
the premises
cannot well be
divided.

*Act. 1846
Cap 16. Sec 1.*

Same subject.

23. In the case mentioned in the preceding section, the commissioners instead of setting off the premises, or a part thereof, in the manner therein provided, may assign the exclusive occupancy and enjoyment of the whole or the part, as the case may be, to each of the parties alternately, for certain specified times, in proportion to their respective interests therein.

Tenant liable
for misconduct
where he has
the exclusive
occupancy.

24. When the whole or any specific part of the premises is assigned in the manner provided in the preceding section, the person entitled for the time being to the exclusive occupancy, shall be liable to his co-tenants for any injury to the premises occasioned by his misconduct, in like manner and to the like extent as a tenant for years under a common lease without express covenants would be to his landlord; and the other tenants in common may have their remedy therefor against him by action on the case, either jointly or severally at their election.

Liabilities in
case of sole
occupancy by
one tenant in
common.

25. Whilst any estate is in the exclusive occupancy of any co-tenant under such an assignment as before mentioned, he shall be entitled to the same remedy against any person who shall trespass upon or otherwise injure the premises as if he held the same under a lease for the same term for which they were so assigned to him; and he and all the other tenants in common shall also be entitled to recover against the wrong doer such other and further damages as they shall have sustained by the same trespass or injury, in like manner as if the premises had been leased by them for such term; and all joint damages recovered by any such tenants in common, by force of this or the preceding section, shall be apportioned and divided among them, according to their respective rights, by the court in which the judgment is recovered.

Commissioners
returns to be
made for con-
firmation by
the court; when
confirmed to be
filed, and regis-
tered.

26. The commissioners shall make a return of their proceedings under their hands, together with their warrant, to the court, and if their proceedings are confirmed by the court, judgment shall be thereupon rendered that the partition so made be final; and the return shall then be filed, and a certified copy thereof be recorded, in the registry of deeds in the county where the lands lie.

27. The court for any sufficient reason shewn may set aside the return and commit the case anew to the same or to other commissioners to be appointed, whereupon the same proceedings shall be had as above directed.

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Return may be set aside and new proceedings had.

28. The final judgment confirming and establishing the partition shall be conclusive as to all rights, both of property and possession, of all parties and privies to the judgment, including all persons who might by law have appeared and answered to the petition, except as is hereafter provided.

Final judgment upon whom conclusive.

29. If any person who was a part owner with the petitioners, and for whom a share is left upon the partition, should be out of the province when the summons or notice to him is served, and should not return in time to appear and answer to the suit, he may, at any time within three years after the final judgment, apply to the court for a new partition of the premises.

Part owners absent from the province, for whom a share was left, may apply within three years for a new partition.

30. If upon such an application, and after hearing of all parties interested therein, it shall appear to the court that the share left for the applicant was less than he was entitled to, or that the part left for him was not at the time of the partition equal in value to his share of the premises, the court may order a new partition thereof, which shall be made in the manner before provided.

Court may, if justice require it, order a new partition.

31. In such new partition the commissioners shall not be required to make a new division of the whole premises, but they may take from any one share or shares and add to any other or others so much as shall in their judgment be necessary to make the partition just and equal, estimating the whole as in the state in which it was when first divided; or if an equal partition of the lands cannot be made without inconvenience to the owners, the commissioners may award money to be paid by one party to another as before provided, to equalize the shares.

Commissioners duty on such new partition.

32. If after the first partition, any improvement shall have been made on any part of the premises, which, by the new partition, shall be taken from the share of the party who made the improvements, he shall be entitled to compensation therefor, to be estimated and awarded by the commissioners, and to be paid by the party to whom such part of the premises shall be assigned on the new partition; and the court may order execution therefor in the usual form.

Improvements to be considered in new partition, and proceedings in such case.

33. If any person who has not appeared and answered to the petition for partition, shall claim to hold in severalty the premises therein mentioned, or any part thereof, he shall not be concluded by the judgment for partition, but may bring his action for the land claimed by him against any or all of the petitioners or defendants, or of the persons holding under them as the case may require, within

Persons not parties to the partition claiming to hold the premises in severalty, not bound by the judgment, but may take proceedings as in other cases.

CHAP. 139. the same time in which he might have brought it if no such judgment for partition had been rendered.

A person not appearing, but claiming a share assigned to a part owner, shall be bound by the partition but may have an action for the share.

34. When any person who has not appeared and answered to the petition shall claim the share that was assigned to, or left for any of the supposed part owners in the judgment for partition, he shall be concluded by the judgment so far as it respects the partition and the assignment of the shares, in like manner as if he had been a party to that suit; but he shall not be prevented thereby from bringing his action for the share claimed by him against the person to whom it was assigned, or for whom it was left.

Action in such case, how and against whom brought.

35. The action in such case shall be brought against the tenant in possession in like manner as if the plaintiff had originally claimed the specific piece of land demanded, instead of an undivided part of the whole land; and it may be brought within the same time in which it might have been brought if no such judgment for partition had been rendered.

Proceedings where two persons claim the same share before division.

36. If two or more persons appear as defendants claiming the same share of the premises to be divided, it shall not be necessary to decide upon their respective claims, except only for the purpose of determining which of them shall be admitted to appear and plead in the suit; and if partition is made, the share so claimed shall be left for whichever of the parties shall prove to be entitled to it, in a suit to be thereafter brought between themselves.

The defendant against whom judgment on the partition is given shall not be precluded thereby from subsequently contesting his right with the other.

37. If in such a case it shall be decided in the original suit for partition, upon the replication of the petitioners or otherwise, that either of the defendants is not entitled to the share that he claims, he shall be concluded by the judgment so far as it respects the partition and the assignment of the shares; but he shall not be prevented thereby from bringing his action for the share claimed by him against the other claimant thereof, in the manner provided in the three preceding sections.

Rights of a party not appearing where the share was not known or allowed, how far affected by the partition judgment.

38. If any person who has not appeared and answered as above shall claim any part of the premises mentioned in the petition, as a part owner with those who were parties to that suit, or any of them, and if the part or share so claimed was not known or not allowed and left for him in the process for partition, he shall be concluded by the judgment so far as it respects the partition; but he shall not be prevented thereby from bringing an action for the share or proportion claimed by him, against each of the persons who shall hold any part of the premises under the judgment for partition.

Redress in such case, how and against whom obtained.

39. If the plaintiff shall prevail in the case last mentioned, he shall not be entitled to demand a new partition of the whole premises, but he shall recover against each of the persons holding under the judgment for partition

the same proportion or share of the part held by him that the plaintiff was entitled to out of the whole premises before the partition thereof. CHAP. 139.

40. If after making of partition it shall appear that any person for whom a share was left or to whom a share was assigned, had died before such partition was made, the heir or devisee of such deceased person shall not by reason of such heir or devisee having been a party to the suit, either as a petitioner or as a defendant, be barred from claiming the share that belonged to the deceased person; but the heir or devisee in such case shall have the same rights and the same remedies in all respects as if such heir or devisee had not been a party to the suit, and had not notice of the pendency thereof.

Rights of heir or devisee where, after partition, it shall appear that the ancestor or testator died before partition, how affected.

41. If any person to, or for whom any share shall have been assigned or left upon any judgment for partition, shall be evicted thereof, by any person, who at the time of the partition, had a title thereto paramount to the title of those who were parties to the suit for partition, the person so evicted shall be entitled to a new partition of the residue, in like manner as if the former partition had not been made.

Remedy where a party is evicted by a person having a paramount title.

42. Any person having a mortgage, attachment, or other lien upon the share of any part owner, shall be concluded by the judgment, so far as it respects the partition and the assignment of the shares; but his lien shall remain in full force upon the part that shall be assigned or left for such part owner.

Lien by mortgage or attachment, how affected by the judgment.

43. In the case of the death of any party in a petition for partition, the suit need not abate, but may be conducted and prosecuted to final judgment, under such rules and orders for bringing in the heirs or representatives of the deceased party, as the court or judge may think proper, for making them parties to the suit and regulating the proceedings accordingly.

Suit not to abate for the death of a party named on a partition.

44. The expenses and charge of the commissioners shall be ascertained and allowed by the court, and all the other costs of the proceedings shall be taxed in the usual manner, and the whole shall be paid by the parties in proportion to their respective shares or interests in the premises, except only the cost of a trial of any issue joined in the case, as to which a different provision is before made.

Expenses of commissioners to be allowed, and costs to be taxed, as in other cases.

45. Every person holding any lands under a partition made by virtue of this chapter shall be considered as holding them under an apparently good title, so that in case of eviction he shall be entitled to compensation for any improvements made thereon.

Titles under a judgment in partition, how considered.

46. All proceedings connected with the partition of lands under this chapter may be taken before a judge at chambers, except where the trial of an issue before a jury

Proceedings may be taken before a judge; exception; appeal.

CHAP. 140. shall become necessary; and all orders required by this chapter, to be made by the court may be made by a judge subject to an appeal from any such order to the court at its next sittings in the county.

Order of a single judge liable to be rescinded or altered.

47. Every order made in pursuance of this chapter by a single judge, not sitting in open court, shall be liable to be rescinded or altered by the court in like manner as other orders.

CHAPTER 140.

OF TENANCIES AND OF FORCIBLE ENTRY AND DETAINER.

Notice to quit, what to be sufficient.

1. When any house or tenement is let by the year, three months notice to quit, before the expiration of the year, and when by the month, one month's notice, and when by the week, one week's notice, shall be given to or by the tenant in possession, and such notice shall be good, though the day on which the tenancy terminated be not named therein.

Warrants may issue in case of forcible entry and detainer, and party held to bail.

2. In cases of wrongful and forcible entry into lands, and in cases of wrongful detainer, or withholding with force after possession demanded, and also when the lessee or sub-lessee shall illegally hold possession after the determination of the lease and demand of possession, or when entry shall be made on lands or into houses or buildings, and the possession is withheld from the party entitled, for seven days after notice to leave and possession demanded, any two justices residing in the town or place wherein the lands lie, on complaint on oath being made, may by warrant cause the person so in possession to be arrested, and detained in custody until he find security for his appearance to answer such complaint, at the next term or sittings of the supreme court in the county, and to pay the costs of the proceedings if adjudged against him; and in case he shall not find security, the cause shall notwithstanding proceed, and such complaint and all proceedings before such justices shall be forthwith filed by them in the supreme court.

In what case warrant may issue.

3. No such warrant shall issue where the party complained of or the person under whom he claims has been in quiet possession for three years next before the filing of the complaint, unless in cases of tenancy where the same has terminated.

Complaint to be summarily tried.

4. The plaintiff shall file and serve his complaint, briefly stated, and the defendant shall, within fourteen days thereafter, file and serve notice of defence, briefly stated;

and the case shall be tried in a summary way in the names of the parties and as a civil suit; and if the complaint is proved to the satisfaction of the court a writ of possession shall issue, and the party complaining be put in possession of the land and premises within ten days thereafter. The court shall have power, at the same time, to award damages for such forcible entry, and in case of a tenant overholding, treble rent up to the time of the landlord's acquiring possession, at the rate previously paid; but the court may, if they think fit, order that the cause may be tried, or the rent or damages assessed by a jury.

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Possession, when to be given.
Court may award damages or order same to be assessed by jury

TITLE XXXVIII.

OF PROCEEDINGS IN SPECIAL CASES.

CHAPTER 141.

*Amended 1865.
Cap 9.*

OF SUITS AGAINST ABSENT OR ABSCONDING DEBTORS.

1. Suits claiming twenty dollars and upwards may be prosecuted against persons absconding or absent out of the province; such suits to be commenced by summons stating the defendant to be absconding or absent out of the province, and containing the cause of action with particulars when a liquidated sum is claimed, returnable in thirty days.

Writs of summons may issue for twenty dollars and upwards.

2. Before the summons issues an affidavit of cause of action shall be made, and the sum endorsed on the summons as in cases of holding to bail, with or without a judge's order, and the affidavit shall also state that the defendant is absent or absconding from the province; a copy of the summons shall be served at the last place of defendant's abode, and no rule to plead or notice of trial shall be required.

Affidavit to be made before the summons issues.

3. At or after the commencement of action and without further or other affidavit, the plaintiff may sue out attachment to take property, and summons to bring in agents, on which attachments shall be endorsed the sum endorsed on the original summons.

Service of summons.

Attachment and summons to agent may be sued out.

4. The sheriff to whom a writ of attachment is directed, shall levy for the amount endorsed on the writ, with one hundred and twenty dollars for probable costs in declaration causes, and twenty-eight dollars in summary suits.

Levy, for what amount; to include costs.

5. The service of process on the agent shall bind all the goods and credits of the absent or absconding person

Goods in hands of agent bound by service of process.

CHAP. 141. then in his possession or under his control, to the amount endorsed on the writ, with one hundred and twenty dollars for probable costs in declaration causes, and twenty-eight dollars in summary suits.

Goods exhibited to be appraised before levy.

6. Where goods are exhibited to the sheriff as the property of the absent or absconding debtor, they shall be valued by two sworn appraisers, and upon an appraisal being made under their hands, the sheriff shall levy upon such part of the goods as shall be sufficient to respond the sum sworn to, and probable costs as above; but the defendant's property shall not be bound by the attachment until a levy is made.

Not bound until levy made

Perishable goods may be sold by order of judge unless security for their value be given.

7. Where the goods consist of stock, or are shewn upon affidavit to be of a perishable nature, and the agent shall not, within three days after notice of the appraisal, give security for the value, a judge, or the prothonotary of the county in his absence, may, at his discretion, cause the same to be sold at public auction, and the proceeds thereof shall be retained by the sheriff, or paid into court to respond the judgment.

Person interested as subsequent attachor or otherwise may contest attachment.

8. When any person shall have any title or interest in any real estate, goods or credits attached, as a subsequent attachor or otherwise, he may be allowed to dispute the validity and effect of the attachment, on the ground that the sum demanded was not justly due, or that it was not payable when the action commenced.

Attachment to be attacked upon affidavit.

9. The party objecting to the attachment may apply to the court to set it aside, which application shall be grounded on an affidavit, setting out the facts and circumstances on which the motion is made, and also shewing that his claim is just and legal.

Court may order jury to try disputed facts, and may make other orders.

10. Upon hearing the motion, the court may direct a trial by jury of any question of fact arising on the inquiry; and if it shall appear that the sum demanded in the prior suit or any part of it is not justly due, or was not payable when the action was commenced, the court shall order the attachment therein made to be set aside in whole or in part, as justice shall require, but the order shall have no other effect in the prior suit.

Proceedings not affected by act of defendant in prior suit or judgment thereon.

11. The proceedings between the two adverse claimants shall not be affected by any plea or other act of the defendant in the prior suit, nor by any judgment that shall be rendered therein.

Court may order security for and award costs, and grant execution.

12. The court may, upon every such inquiry, direct such security to be given for costs, and, upon any decision thereon, may award costs to either party as they shall think just and reasonable, and execution in the common form may be issued therefor.

When defendant may appear.

13. The defendant may appear at any time before judgment.

14. If no appearance be entered after six months from attachment of property or service of an agent, unless special matter in bar, abatement or further continuance be allowed, the damages may be assessed before a judge at chambers, or before the court, and the judge or court may, at his or their discretion, order a trial before a jury. CHAP. 141.

Damages, when and how assessed if no appearance.

15. If dissatisfied with the proof or the finding of the jury, the judge or court may order a new trial, or may postpone judgment for not more than six months, to allow the defendant further opportunity to defend.

Judge may order new trial or postpone judgment.

16. Where a person summoned as agent or trustee shall file a declaration under his hand that he had not, at the time the summons was served upon him, any goods or credits of the absent or absconding debtor in his possession or under his control, and shall, if required, submit to an examination upon oath satisfactory to the court, such agent or trustee shall be discharged and be entitled to his reasonable costs, to be taxed and allowed; but in summary cases an agent shall not be allowed more than four dollars and sixty-seven cents for his costs, besides his travelling fees and attendance, as in the case of a witness.

Agent to file declaration, and submit to examination. When he has no funds to have his costs. Agent's costs in summary cases.

17. When an agent or trustee is summoned, he shall appear and file his declaration with the prothonotary of the county where he resides, and serve the plaintiff or his attorney with a copy thereof within fifteen days after service; but he shall not be required to appear for personal examination except on notice to that effect and in the county where he resides, either before a judge or the court in term or sittings.

Appearance of agent or trustee, when.

Examination, when.

18. If any person summoned as an agent or trustee shall fail to appear and disclose upon oath if required, the amount of the goods or credits of the principal in his possession, or under his control, at the service of process, or acknowledge that he hath sufficient in his hands to respond the judgment, the court may proceed against him as for a contempt; and he shall also be liable to pay the plaintiff his costs if the court shall so order.

Proceedings where agent fails to appear.

19. When the absent or absconding debtor, his agent or trustee, shall desire to relieve the property from the attachment, he shall put in and perfect special bail to respond the judgment, and submit to such terms as the court or a judge shall deem right for the attainment of substantial justice.

Special bail may be put in, and property relieved from attachment.

20. The plaintiff shall not proceed in the trial of his cause against any absent or absconding debtor, unless his real estate or goods shall have been attached, or until the agent or trustee shall have admitted that he had goods or credits of such absent or absconding debtor in his possession or under his control.

No trial until property has been attached, or agent has admitted goods in his possession.

21. Where judgment has been obtained against an absent or absconding debtor, the defendant shall be entitled to a rehearing at any time within three years.

Defendant entitled to rehearing within three years.

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Execution may issue against agent by order of court.

Security to be given before execution shall issue against debtor.

Agent not liable to principal for value of goods taken by process.

Companies doing business by agents, how sued.

Time for communicating with principal. Judgment against company; liability of agent.

Agent may be examined after judgment.

Plaintiff may proceed by attachment.

22. After judgment obtained against an absent or absconding debtor, the court or a judge shall grant execution against any agent or trustee who has appeared and acknowledged goods or credits in his hands, for such amount and on such terms as the court or a judge shall think fit, allowing the agent his reasonable costs and commission; such agent or trustee having had notice of the application.

23. No execution shall issue against an absent or absconding debtor until the plaintiff shall give security to the satisfaction of the court or a judge for the re-payment of all monies levied thereunder, in case the judgment should be reversed.

24. The agent of such absent or absconding debtor shall not be held liable for any goods or credits so taken out of his hands by process and judgment of law.

25. Companies or bodies corporate associated or incorporated out of Nova Scotia, doing business by an agent within this province, may be sued for any cause of action arising in whole or in part therein, by the name whereby they are associated or incorporated, or by the name whereby they may be designated by the agent;—and service on the agent of process to appear, shall give the court jurisdiction over the case; and proceedings shall be had as when process to appear has been served on a defendant personally; and any person so served may, during the first term, appear and shew that he is not an agent, and upon proof thereof he shall have judgment against the plaintiff with costs of suit.

26. The court may, on sufficient cause shewn, allow time for the agent to communicate with his constituent.

27. If judgment shall pass for the plaintiff, the agent, whether the same agent who was served with process or any other, shall be bound to respond the same out of the assets of the company, or body corporate, which then are, or at any time afterwards may come into his hands or under his control, deducting his costs, and fair and legal commission thereon, to be disclosed by the agent on oath, if thereto required.

28. After judgment, the agent may be examined on oath before the court or a judge at chambers, concerning the assets of the company, or corporate body, in his hands or under his control at the time of judgment, or at any time afterwards; and the plaintiff and his proof may be heard in explanation or contradiction; and such order shall be therein made as to justice may appertain, which shall be enforced against the agent personally.

29. If the plaintiff shall desire security previous to judgment, he may at the commencement of the suit, or during its progress, make oath to the cause of action, and proceed by attachment against the estate and effects of the company, or corporate body, and by summons to

disclose against the agents and debtors of the company, or corporate body, or by either process, and by one or in separate and several writs; and the estate and effects attached, and also the credits and effects in the hands or under the control of the agents or debtors at the time of service, or at any time afterwards, shall be available to respond the judgment to the amount of the sum sworn to and costs, as in cases under the sections relating to absent or absconding debtors; but the plaintiff may nevertheless proceed against the agent after judgment as before directed. CHAP. 142.

30. Nothing in the last five sections contained shall prevent the judgment from binding the property of the company, or body corporate, or from being levied and enforced by execution, or otherwise in such manner as may be conformable to law in other cases. Other remedies
not affected by
this act.

31. Before a summons shall issue in a case against an absent or absconding debtor to bring in an agent or trustee, the plaintiff or his agent shall make an affidavit of his belief, that the person proposed to be summoned is the agent or trustee of the defendant, or hath goods or credits of such defendant in his possession or under his control. Affidavit for
summons
against agent.

CHAPTER 142.

OF SUITS AGAINST JOINT DEBTORS.

1. Where there are several defendants, and it is not intended that all of them shall be arrested, the plaintiff or his attorney may direct the sheriff to arrest one or more only of the defendants and serve a copy of the capias on the others, and such service shall be of the same force and effect as the service of a writ of summons. One of several
defendants,
joint debtors,
may be arrest-
ed.

2. Where any action founded on contract is brought against several defendants, and the writ has been duly served on one or more of them, but no legal service can be made on the others by reason of their absence from the province, the action may nevertheless be prosecuted against those who have been served. One or more of
such defend-
ants served
may be pro-
ceeded against
if the others are
absent.

3. If such joint debtor shall make application to the court on affidavit, stating that it is necessary for him to receive instruction respecting such suit from his absent partner or joint debtor, and that he cannot safely proceed to trial of the cause without communication with him, and that he is not seeking for delay only, the court may, if it shall think fit, grant a reasonable imparlance. Court may
grant a continu-
ance in such
case upon
cause shewn.

4. If any such joint debtor, not having been served with process, shall come into the province previously to An absent joint
debtor may ap-
ply to defend

CHAP. 142. the final determination of the suit, and shall apply to the court to be admitted to defend, the court shall admit him accordingly, and shall cause such amendment to be made in the proceedings as may be required to make the same consistent and regular.

any time before final judgment.

Plaintiff shall file his declaration against the defendant served and enter suggestions as to the others.

5. When some only of the defendants have been served with process, the plaintiff may file his declaration against such as have been so served, suggesting therein the names of those defendants who were absent out of the province when the writ was issued, and who, on that account, could not be served with process.

Plea of abatement to be disallowed unless under special circumstances duly verified.

6. No plea in abatement for the non-joinder of a person as a co-defendant shall be allowed unless it shall be stated in the plea that he was at the commencement of the suit resident within the jurisdiction of the court, and unless his place of residence shall be stated with convenient certainty in an affidavit verifying the plea.

Replikations of bankruptcy or insolvency to pleas in abatement.

7. To any plea in abatement of the non-joinder of another person, the plaintiff may reply that such person has been discharged by bankruptcy and certificate, or as an insolvent debtor.

Plaintiff may have a *scire facias* against a joint debtor returning after suit commenced.

8. If a joint debtor, absent at the commencement of the suit, shall come into the province after final judgment, and before the plaintiff shall have received full satisfaction thereof, the plaintiff may sue out a writ of *scire facias* against him, requiring him to shew cause why execution should not issue against him to satisfy what may remain due on such judgment; and the defendant may plead either in bar to the original suit or in answer to the *scire facias*.

On what property execution may be levied.

9. The plaintiff after judgment recovered may take out execution thereon, and cause the same to be extended on the joint or separate property, or on the persons of all the joint debtors; but such execution shall not be extended on the separate property or on the person of any joint debtor, not brought into court as a party to the suit.

CHAPTER 143.

OF SUITS AGAINST EXECUTORS, ADMINISTRATORS, AND TRUSTEES.

Within what time executors, &c. may bring action for injuries to real estate of deceased.

1. Actions of trespass, or trespass on the case, may be maintained by executors or administrators for any injury to the real estate of the deceased committed within six months previous to his decease, for which the deceased might have maintained such action; provided the action be brought within one year after his death.

2. Actions of trespass, or trespass on the case, may be maintained against the executors or administrators of a deceased person, for any injury done by him in his lifetime to the real or personal property of another, so as such injury shall have been committed within six months before his death, and so as such action shall be brought within six months after his executors or administrators shall have undertaken the administration of his estate. CHAP. 143.

Within what time actions of trespass, &c. may be brought against executors, &c., for injuries done by deceased.

3. An action of debt on simple contract may be maintained at common law against any executor or administrator. Actions of debt may be maintained against executors, &c.

4. Every legatee may recover the amount and value of his legacy, annuity or bequest, at common law, from the administrator with the will annexed, or executor, either by action for money had and received or otherwise. Legacies, &c. may be recovered by action at common law.

5. Any executor being a residuary legatee may maintain an action at common law for money had and received or otherwise, against the co-executor, and may in like manner sue for and recover his rateable part thereof, and any other residuary legatee shall have the like remedy against an executor. Residuary legatees may sue their co-executors.

6. When two or more persons are named executors in a will and any of them shall neglect or refuse to act, and probate shall be granted to the other or others of them, it shall not be necessary to name the executor who has so refused or neglected, in any action or suit relating to the estate. Executors refusing to act, and to whom probate has not been granted, need not be named in any suit, &c.

7. Executors, administrators, and trustees, unless where otherwise directed by the will or other instrument creating the trust, are hereby authorized to invest money and funds in their hands, or under their control, in the provincial savings bank, or in the provincial debentures; and the production of such provincial debentures, or other evidences of money so invested and deposited, shall be held equivalent to the production of the amount of money actually paid by such executor, administrator, or trustee. Executors, &c. authorised to make investments in provincial debentures.

8. Upon the petition of any trustee appointed by deed, or of any executor appointed a trustee by any last will, asking his discharge from the trust or executorship, a judge of the supreme court may direct such preliminary enquiry, and with such notices to parties interested as he shall think fit, as to the terms upon which the resignation of such trustee or executor should be accepted; and the supreme court may thereafter pass such order for the discharge of such trustee or executor, as a due regard to his wishes and interest, and to the rights and interest of the person interested in the execution of the trust, may require. Proceedings on resignation of trustees, &c.

9. A petition may be presented in like manner, by any person interested in the execution of a trust, asking for the removal of the trustee or executor, and a like enquiry may Removal of trustees, &c.

CHAP. 144. be thereupon had, and such order passed by the supreme court, or any two judges thereof, as a due regard to the rights and interests of the trustee or executor, and of the parties interested in the execution of the trust, may require.

Appointment of new trustees.

10. The supreme court, or any two judges thereof, shall have full power to appoint a new trustee in place of a trustee or executor so discharged or removed, or of any trustee removed from the jurisdiction of the court, or in case of the death, unfitness or incapacity, of a trustee, and upon such terms as to security for the due execution of the trust as shall be deemed necessary; and when, in consequence of such resignation or removal, there shall be no acting trustee, the court, or any two judges thereof, in its discretion, may appoint new trustees, or cause the trust to be executed by one of the officers of the court under its direction.

Costs, how paid &c.

11. The court may direct the costs of any proceedings under the three last sections to be taxed and paid out of the trust funds, or otherwise, as they shall think proper.

CHAPTER 144.

OF COMMISSIONERS WITHOUT THE PROVINCE.

[PASSED ON THE 18TH DAY OF APRIL, A. D., 1864.]

Appointment of commissioners; their acts to be valid.

1. The governor in council may select as commissioners, persons residing in the United Kingdom or in any British colony, or in a foreign country, and a certificate under the hand and seal of any such commissioner of the due acknowledgment as required by law, before him, of release of dower by married women in lands situate within this province, or of the attestation under oath before such commissioner, of the due execution of deeds and writings intended to be registered, deposited, or filed, in any public office in this province; or of the attestation to affidavits relating to the transfer and registry of vessels belonging to this province, and relating to proceedings in the supreme court, or in any other court within this province, being a court of record, shall be of full force and effect in this province, when produced in evidence therein, to all intents and purposes, as if such acknowledgment, oath, or attestation had been duly taken, administered and certified, by and before persons authorized to act in like cases within this province.

Suspending clause.

2. This act shall not go into operation until her majesty's assent shall be signified thereto.

CHAPTER 145.

OF DISTRESS FOR RENT AND REMEDY.

1. Where any goods are distrained for rent reserved and due upon any lease or contract, and the tenant or owner of the goods shall not within five days next after the distress taken, and notice thereof with the cause of taking served upon him, or left at the most conspicuous place on the premises charged with such rent, replevy the same with security to be given to the sheriff, the landlord, with the sheriff or his deputy or a constable, who are required to aid therein, may cause the goods so distrained to be appraised by two sworn appraisers.

Goods distrained to be appraised and sold within five days after notice if not replevied.

2. After the appraisement the landlord shall sell the goods distrained for the best price to be gotten therefor, towards payment of the rent due and expenses incurred, leaving the overplus, if any, in the hands of the officer for the owner's use.

Goods to be sold, and after rent paid, surplus, if any, to remain for owner's use.

3. Sheaves or cocks of grain, grain loose or in the straw, hay in a barn or upon a hovel, stack or rick, or upon the land charged with such rent, may be locked up or detained upon the premises by a landlord having rent in arrear, for or in nature of a distress, until the same shall be replevied upon security to be given as above; and in default of being replevied within the time above in that behalf specified, after appraisement made in like manner, be sold; but the same shall not be removed out of the place where found and seized by the distrainer, to the damage of the owner, before such sale.

Grain in the straw, hay in a barn, &c., how distrained.

4. Upon any pound-breach and rescue of goods distrained for rent, the person aggrieved thereby may recover his damages against the offender, or against the owner of the goods distrained if the same be afterwards found to have come to his use or possession.

Remedy in case of pound breach and rescue of goods distrained.

5. In case any distress and sale be made by any person for rent, where none is in arrear, the owner of the goods distrained, his executors and administrators, by action of trespass, or trespass on the case, may recover against the persons distraining or either of them, his or their executors or administrators, the value of the goods distrained, and such further damages as the jury may award.

Remedy in case of a distress for rent where none is in arrear.

6. No goods being upon any messuage or tenement leased shall be liable to be taken by virtue of any execution, unless the party at whose suit the execution is sued out shall before removal of such goods from off the premises pay the landlord or his bailiff at least one year's rent thereof, if so much is in arrear and due; and if the rent be not actually due then a rateable part thereof up to the levy of the execution. If the arrears exceed one year's

Goods not liable to be removed under execution till rent paid, but not to exceed one year's amount, &c.

CHAP. 145. rent of the premises, then upon payment to the landlord or his bailiff of one year's rent, the execution creditor may proceed to execute his judgment as in other cases; and the sheriff, his deputy or other officer is required to levy and pay to the execution creditor, as well the money so paid for rent as the execution money.

Goods fraudulently removed to avoid distress may, unless previously sold in good faith, be seized within twenty-one days.

7. In case any lessee of any messuage, lands or tenements, upon the demise whereof any rents are reserved, shall fraudulently or clandestinely convey from such demised premises his goods, with intent to prevent the landlord distraining the same, such landlord, by himself or his servants, may within twenty-one days then next ensuing such conveying away, seize such goods wherever found as a distress for such arrears of rent, and dispose of the same as if they had been distrained upon the premises, unless such goods shall have been sold in good faith and for a valuable consideration before such seizure, in which case they shall not be liable to a distress.

Rent reserved upon a lease for life may be recovered as in other cases.

8. Rent in arrear and due upon a lease for life or lives may be recovered by action in the same way as if reserved upon a lease for years.

Rent may be distrained for within six months after determination of lease in certain cases.

9. Rent in arrear and due upon a lease for life or lives, or for years or at will, ended or determined, may be distrained for after such determination, in the same way as if such leases were not determined, if such distress be made within six months after such determination, during the continuance of the landlord's title or interest and during the possession of the tenant from whom such arrears are due.

Executors, &c., may distrain for rent due deceased, and in what cases.

10. Executors or administrators of a landlord may distrain upon lands demised for a term or at will, for rent due in his lifetime, and such rent may be distrained for after the determination of such term or lease at will, in the same manner as if such term or lease had not been ended or determined; but the distress in such case must be made within six months next after the determination of such term or lease and during the continuance of the possession of the tenant from whom such rent is due.

Cattle, corn, fruits, &c., may be taken as a distress for rent.

11. A landlord or his bailiff may seize as a distress for arrears of rent any cattle or stock of his tenant feeding upon any common belonging to any part of the premises demised, and may also seize all sorts of corn, grain, grass, hops, roots, fruits, pulse or other product growing on any part of the premises demised as a distress for arrears of rent, and may cut, gather, cure, carry and lay them up when ripe in barns or other places on the premises so demised.

Distress in such case, how kept where no barn, &c., upon the premises.

12. In case there is no barn or proper place on the premises for receiving the same, then he may cause the same to be placed in any barn or proper place to be procured as near as may be to the premises, and in convenient

time shall appraise and dispose of the same towards satisfaction of the rents and the charges of such distress as in other cases. The appraisement to be made after the crop is cut, cured, and gathered, and not before. CHAP. 146.

13. Notice of the place where the goods so distrained shall be deposited, shall within one week after their being so deposited, be given to the tenant or left at his last place of abode. Notice of the place of such deposit, when and to whom to be given.

CHAPTER 146.

OF ARBITRATION.

1. The power of arbitrators, appointed under a rule or submission containing an agreement that it should be made a rule of the supreme court, shall be irrevocable, unless the court or a judge shall otherwise order; and the court or a judge may enlarge the time for making an award thereunder. Power of arbitrators, when irrevocable; judge may enlarge time for award.

2. In any case referred to arbitration, whether by rule of court or otherwise, the arbitrators shall have power to issue subpoenas for the attendance of witnesses before them at any time or place therein named; and any person on whom any such subpoena shall have been served, and who shall have been tendered such fees for travel and attendance as are fixed by law for witnesses in the supreme court, shall be liable, in case of disobedience of such subpoena, to the same punishment and liabilities as if the said subpoena had issued from the supreme court for the attendance of the witness at a trial therein. Attendance of witnesses, how enforced.

3. No person shall be compelled to produce, under any rule or order, any writing or document that he would not be compelled to produce at a trial, nor to attend on more than two consecutive days. Punishment for disobedience of subpoena.

4. Arbitrators so appointed may administer oaths to the witnesses. Production of documents; witness not compelled to attend more than two days consecutively.

5. When arbitrators are appointed under a submission not containing any agreement that it shall be made a rule of court, any justice of the peace may administer oaths to the witnesses in the presence of one or more of the arbitrators. Arbitrators may swear witnesses.

6. If it be made appear, at any time after the issuing of the writ, to the satisfaction of the court or a judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, it shall be lawful for such court or judge, upon such Justices may administer oaths when arbitrators not appointed under rule of court.

Power of court or judge, upon application, to direct arbitration before trial.

*1865. Capl Sec 14. In Case parties do not appear
arbitrators required by Section 6
Court or Judge to appoint*

CHAP. 146. application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter either wholly or in part, be referred to an arbitrator or arbitrators appointed by the parties, upon such terms, as to costs and otherwise, as such court or judge shall think reasonable; and the decision or order of such court or judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred.

Special case may be stated and question of facts tried.

7. If it shall appear to the court or a judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the court, or upon a question of fact fit to be decided by a jury, or by a judge, upon the consent of both parties, as hereinbefore provided, it shall be lawful for such court or judge to direct a case to be stated, or an issue or issues to be tried; and the decision of the court upon such case, and the finding of the jury or judge upon such issue or issues, shall be taken and acted upon by the arbitrator as the case may be, as conclusive.

Arbitrator may state special case.

8. It shall be lawful for the arbitrator, upon any compulsory reference under this chapter, or upon any reference by consent of parties where the submission is or may be made a rule or order of the court, if he shall think fit and if it is not provided to the contrary, to state his award, as to the whole or any part thereof, in the form of a special case for the opinion of the court, and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the court.

Power of judge to direct arbitration at time of trial when issues of fact left to his decision.

9. If upon the trial of any issue of fact by a judge under this chapter, it shall appear to the judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, it shall be lawful for him, on the application of either party, to order that such matter of account be referred to an arbitrator appointed by the parties, upon such terms, as to costs and otherwise, as such judge shall think reasonable; and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial; and it shall be competent for the judge to proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made.

Proceedings before, and power of, such arbitrator.

10. The proceedings upon any such arbitration or reference as aforesaid shall, except otherwise directed hereby or by the submission or document authorizing the reference, be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator and of the court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of court or judge's order.

11. In case of any such arbitration or reference as aforesaid the court or a judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the re-consideration and re-determination of the said arbitrator or referee, upon such terms, as to costs and otherwise, as to the said court or judge may seem proper. CHAP. 146.

Power of judge to send back matters for re-consideration to arbitrator.

12. All applications to set aside any award made on a compulsory reference under this chapter, shall and may be made to the court or a judge within one month next following the publication of the award to the parties, whether made in vacation or term; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties.

Applications to set aside the award.

13. Any award made on a compulsory reference under this chapter may, by authority of a judge, on such terms as to him may seem reasonable, be enforced at any time after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed.

Enforcing of awards within period for setting them aside.

14. Where a *rule nisi* is obtained to set aside an award, the several objections thereto intended to be insisted on at the time of moving to make such rule absolute shall be stated in the rule to show cause.

Objections to award to be stated in rule nisi.

15. Whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall nevertheless commence any action against the other party or parties, or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred, or any of them, it shall be lawful for the court in which the action or suit is brought, or a judge thereof, on application by the defendant or defendants, or any of them, before appearance and defence or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of the bringing of such action or suit, and still is, ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make a rule or order staying all proceedings in such action or suit, on such terms, as to costs and otherwise, as to such court or judge may seem fit: provided always that any such rule or order may at any time afterwards be discharged or varied as justice may require.

If action commenced by one party after all have agreed to arbitration, court or judge may stay proceedings.

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On failure of parties to appoint arbitrators, the judge may appoint an arbitrator, umpire, or third arbitrator.

16. If in any case of arbitration, the document authorizing the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator; or if any appointed umpire or third arbitrator refuse to act, or become incapable of acting, or die, and the terms of the document authorizing the reference do not show that it was intended that such a vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one; then in every such instance any party may serve the remaining parties or the arbitrators, [*as the case may be,*] with a written notice to appoint an arbitrator, umpire or third arbitrator respectively; and if, within seven clear days after such notice shall have been served, no arbitrator, umpire or third arbitrator be appointed, it shall be lawful for the court or a judge, upon the application of the party having served such notice as aforesaid, to appoint an arbitrator, umpire or third arbitrator, [*as the case may be,*] and such arbitrator, umpire and third arbitrator respectively shall have the like power to act in the reference, and make an award as if he had been appointed by consent of all parties.

When reference is to two arbitrators, and one party fail to appoint, the other party may appoint arbitrator to act alone.

17. When the reference is or is intended to be to two arbitrators, one appointed by each party, it shall be lawful for either party, in case of the death, refusal to act, or incapacity of any arbitrator appointed by him, to substitute a new arbitrator, unless the document authorizing the reference show that it was intended that the vacancy should not be supplied; and if, on such a reference, one party fail to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party shall have appointed an arbitrator, and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him shall be binding on both parties as if the appointment had been by consent; provided, however, that the court or a judge may revoke such appointment on such terms as shall seem just.

When reference is to two arbitrators they may appoint an umpire.

18. When the reference is to two arbitrators, and the terms of the document authorizing it do not show that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two

arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner. CHAP. 146.

19. The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and unless such document or order respectively shall contain a different limit of time, within three months after he shall have been appointed, and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party, but the parties or their attornies may by consent in writing enlarge the term for making the award; and it shall be lawful for the court of which such submission, document, or order is or may be made a rule or order, or for any judge thereof, for good cause to be stated in the rule or order for enlargement, from time to time to enlarge the term for making the award; and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed an enlargement for one month; and in any case where an umpire shall have been appointed it shall be lawful for him to enter on the reference in lieu of the arbitrators, if the latter shall have allowed their time or their extended time to expire without making any award, or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree.

Award to be made in three months, unless parties or court enlarge the time.

20. When any award made on any such submission, document, or order of reference as aforesaid directs that possession of any lands or tenements capable of being the subject of an action of ejectment, shall be delivered to any party, either forthwith or at any future time, or that any such party is entitled to the possession of any such lands or tenements, it shall be lawful for the court or a judge to order any party to the reference who shall be in possession of any such lands or tenements, or any person in possession of the same claiming under, or put in possession by him since the making of the document authorizing the reference, to deliver possession of the same to the party entitled thereto, pursuant to the award, and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue, and possession shall be delivered by the sheriff as on a judgment in ejectment.

Rule to deliver possession of land, pursuant to award, to be enforced as a judgment in ejectment.

21. Every agreement or submission to arbitration by consent, whether by deed or instrument in writing not under seal, may be made a rule of court on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of court.

Agreement or submission in writing may be made rule of court, unless a contrary intention appear.

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Obedience to
an award, how
enforced.

22. Where a submission has been made a rule of the supreme court, the court may enforce obedience to any award duly made under such submission by directing a judgment to be entered or execution to issue for the amount thereof with costs, or otherwise to carry into effect the said award.

Fees to arbitra-
tors to be al-
lowed on taxa-
tion of costs.

23. The judge taxing the costs of any cause referred under this chapter shall allow such fees to the arbitrators making the award as he may think reasonable.

*Amended in 1865. Chap. 1. Sec. 15.
as to fine for interrupt* CHAPTER 147. *being Deputy Suror*

OF PETTY OFFENCES, TRESPASSES, AND ASSAULTS.

Larcenies
under \$100. and
felonies by
juvenile offen-
ders, how tried.

1. A court of general or special sessions in any county or district at which not less than five justices shall be present, may, in a summary way, hear and try all larcenies when the value of the property stolen shall not exceed one hundred dollars, and may hear and try trespasses and felonies committed by juvenile offenders under the age of fourteen years, excepting only capital felonies: provided that such trials shall take place at the court-house of such county or district.

Exceptions.
Proviso.

Proceedings
after arrest of
prisoner.

2. When any person has been arrested and committed to jail by warrant for any offence triable under the first ten sections of this chapter, the jailer shall forthwith notify the sheriff thereof, who shall give notice of the same to the custos, and such custos shall direct the clerk of the peace to summon a special sessions to meet at a day to be named by him sufficiently distant to permit notice to the prisoner as hereinafter named, and the clerk of the peace shall forthwith, on receipt of such direction, convene such special sessions, and notify the prisoner of the day named for his trial, at least eight days previous to such special sessions.

Punishment.

3. The justices in general or special sessions as aforesaid shall have power to punish by fine or imprisonment, or both, with or without hard labor, as they shall see fit, but in no case shall they be allowed to fine beyond forty dollars, or to imprison beyond six months, and that only in the county or district jail.

Appeal.

4. Any party feeling aggrieved by the sentence of such justices in general or special sessions, may appeal to the supreme court, or a judge, who may rehear the case, and make such order therein as justice shall require; but offenders convicted before the justices in general or special sessions shall not be allowed to escape punishment from

*If any person shall interrupt, molest or hinder any prisoner
in the custody of a jailer or other person authorized by the Governor,
the Council or the Court of Criminals, or a Judge of the Supreme
Court, in the discharge of his duty as a Surveyor, or*

any mere informality in the proceedings, and no relief shall be allowed unless it shall be made to appear by affidavit that injustice would otherwise be done.

5. The proceedings up to the hearing before the justices in general or special sessions shall be by information and summons or warrant, as in the first section of chapter one hundred and seventy-two, and the hearing and all subsequent proceedings shall be the same as in civil cases, except that subpoenas and other writs shall be in the name of the queen for the defendant as well as the plaintiff.

6. All constables and peace officers shall be compelled to execute writs and process, as in other cases of proceedings at the suit of the crown.

7. The justices in general or special sessions shall make their conviction and sentence in writing, and shall furnish a copy thereof to the constable or other officer, who shall deliver the same to the jailor in case of a sentence of imprisonment.

8. No fees shall be paid or received under the foregoing sections, but officers and witnesses shall be entitled to remuneration as in other criminal cases.

9. In the case of incorporated counties or districts, the powers conferred under the foregoing sections, shall be exercised by the monthly municipality courts.

10. The foregoing sections shall not extend to the city of Halifax.

11. The sessions shall make regulations for preventing trespasses by horses, asses, mules, cattle, sheep, swine, or goats going at large.

12. Persons violating the regulations shall forfeit a sum not exceeding eight dollars.

13. Where a trespass has been committed by horses, asses, mules, cattle, sheep, swine or goats, and the damage alleged to have been suffered shall not exceed twelve dollars, the case may be tried before a justice of the peace in the same manner and with the like costs, and subject to appeal and other proceedings as if it were an ordinary debt.

14. The justice shall grant replevin where required upon security being given for prosecuting the same with effect within seven days.

15. The writ of replevin shall be in the following form:—

You are hereby commanded to replevy to A. B. his cattle, viz.: [here describe them] which C. D. unjustly, as is alleged, detains under pretence of having committed a trespass not exceeding twelve dollars, and also to summon the said C. D. to appear before me at —, on the — day of —, at — o'clock, in the — noon, there to answer such things as shall be objected against him by the said A. B.

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Informality not to affect proceedings.

Proceedings before justices

Writs, &c., how executed.

Conviction.

Fees.

Incorporated counties and districts.

Extension of act.

Sessions to make regulations respecting horses, &c., going at large.

Penalty for violating regulations.

A justice to have jurisdiction over trespasses by horses, &c., to \$12.

Replevin may be granted by justice.

Form of writ.

And if imprisoned by any two Justices of the Peace in their discretion, the imprisonment shall be for not more than seven days, and the fine not to exceed ten dollars.

CHAP. 147. Witness my hand and seal, this — day of —, A. D. one thousand eight hundred and —

E. F., J. P. (seal.)

Cause to be tried as in other cases.

16. The justice shall try the cause commenced by such writ, and give judgment with the like costs as in ordinary cases of debt and subject to the same further proceedings thereon.

Penalty for damaging or defacing a common.

17. If any person shall cut or carry away the soil or sods of any common whereby the pasturage shall be injured or the ground defaced, he shall forfeit a sum not exceeding four dollars.

Penalty for injuring ornamental trees on public roads.

18. If any person shall cut down or injure any trees planted for ornament or left growing on the side of any public square, street or highway, he shall forfeit for every such tree a sum not exceeding eight dollars, but no penalty shall attach for the removal of any such trees by a commissioner of streets or surveyor of highways.

Penalty for trespassing on cultivated enclosures.

19. If any person shall trespass in a cultivated enclosure he shall forfeit a sum not exceeding eight dollars for the use of the occupier of the land.

Penalty for injury to trees.

20. If any person shall illegally cut down or injure any tree growing on crown or private land, or shall illegally carry away any such tree when cut down, he shall, for every such tree, forfeit a sum not to exceed eight dollars to the commissioner of crown lands for the time being, for the use of the province, or to the owner of the soil, as the case may be, but in no case shall the whole penalty exceed twenty dollars. No person imprisoned under execution issued upon any judgment for breach of this section, shall be entitled to jail limits, or to the benefit of chapter one hundred and thirty-seven, relating to insolvent debtors, until he shall have been imprisoned, if, for the first offence, a period of five days, and for the second or subsequent offence, a period of ten days.

Imprisonment.

21. Nothing in the two preceding sections contained shall take away from the party injured any right of action at law for the trespass committed.

The above penalties to be cumulative remedies.

Offences in sections 17, 18, 19 and 20, declared under jurisdiction of justices of the peace.

22. The offences enumerated in sections seventeen, eighteen, nineteen and twenty, are hereby declared to be under the jurisdiction of one or more justice or justices of the peace according to the amount of penalty sought to be recovered.

Two justices of the peace to have jurisdiction over assaults to \$3.

23. Two justices of the peace may hear and determine in a summary way, all complaints for common assaults and batteries, and upon conviction the offender shall forfeit a sum not exceeding eight dollars, to be paid over when recovered to the county treasurer, and the justices shall forthwith file the receipt of the county treasurer with the clerk of the peace.

Executions may issue for fines and costs.

24. If the fine and costs awarded shall not be paid forthwith, or within the time appointed for that purpose

135. See 43. page 580.

by the justices, the same may be levied by execution in the usual form, under which the offender may be imprisoned for a period not exceeding thirty days, unless the fine and costs be sooner paid.

25. If the justices upon the hearing shall deem the offence not proved, or so trifling as not to merit punishment, they may dismiss the complaint, and if required shall give the party acquitted a certificate accordingly.

26. The justices may give costs either to complainant or defendant, or dismiss the complaint without costs on either side.

27. If the offence charged be of an aggravated kind, or if upon the hearing the justices think the offender deserving a higher punishment than above prescribed, they may bind the offender over by recognizance to appear at the next supreme court to answer the charge, and if necessary may also bind over the prosecutor to appear and prosecute, and the witnesses to give evidence.

28. If any person shall have obtained a certificate as above, or, having been convicted, shall have paid the whole amount adjudged, or shall have suffered the punishment awarded for non-payment thereof, he shall be thereby acquitted of all criminal proceedings for the same offence.

29. Every prosecution under this chapter shall be commenced within six months after the offence committed.

30. The justices shall proceed by summons in the form following :

To any of the constables of the county of ——— :

You are hereby commanded to summon A. B., of ———, to appear before us at ——— on the ——— day of ——— next, to answer C. D. for a petty trespass [*or for a petty assault and battery, as the case may be*] committed on or about the ——— day of ———, contrary to the provisions of chapter one hundred and forty-seven.

Witness our hands at ——— the ——— day of ———, A. D. 18—.

E. F., J. P. (seal.)
G. H., J. P. (seal.)

31. The convictions under this chapter shall be endorsed upon or annexed to the original summons in the form following :

The within named C. D., having been duly summoned, was this day convicted of a petty trespass [*or a petty assault and battery, or a petty assault*] upon his own confession [*or upon default, or upon the oath of J. K., as the case may be, stating the manner of the party's conviction and the names of the witnesses examined*] and was thereupon fined the sum of ———, with costs, amounting in all to the sum of ———, to be paid forthwith [*or within ——— days next.*]

CHAP. 147.

and imprisonment may be ordered not exceeding thirty days.

Justices may dismiss a complaint and give a certificate accordingly.

Justices may give to or withhold costs from either party.

Where the offence is aggravated the justices may bind over the parties to appear at the supreme court.

Compliance with the justice's judgment shall acquit from all further criminal proceedings.

Limitation of prosecutions.

Proceedings to be by summons; form given.

Conviction to be endorsed or annexed to the summons; form given.

CHAP. 148. Witness our hands this — day of —, A. D. 18—.

E. F., J. P.

G. H., J. P.

Which, when signed by the justices, shall be a valid record of such conviction.

CHAPTER 148.

OF THE WRIT OF CERTIORARI.

Bail to be filed before issuing a writ of certiorari: endorsement required on the writ.

1. Previous to issuing a writ of certiorari the judge or commissioner shall require the person applying therefor to file sufficient bail, in such reasonable amount as the judge or commissioner shall direct, to respond the judgment to be finally given in the cause, and the judge or commissioner shall endorse on the writ the amount for which bail is filed, with the names of the bail, and also the date when the writ was allowed, and shall put his signature thereto.

Court above may inquire anew into the facts, and may order a trial by jury.

2. In all causes and proceedings brought up by certiorari, the court may inquire into the facts anew, if it shall seem to them to be necessary, and may order a trial thereof by jury.

In civil suits, cases how conducted.

3. In all civil suits the cause shall be conducted in the names of the real parties.

CHAPTER 149.

OF INTERPLEADER.

When the defendant alleges the interest in the subject of the suit to be in a third party, he may, before plea, apply for a rule or order upon him to appear and state his claim.

1. If in any action of assumpsit, debt, detinue or trover, the defendant, after declaration and before plea, shall by affidavit or otherwise shew that he claims no interest in the subject matter of the suit, but that the right thereto is claimed or supposed to belong to some third party, who has sued or who is expected to sue for the same, and that such defendant does not in any manner collude with such third party, but is ready to bring into court or to pay or to dispose of the subject matter of the action in such manner as the court or any judge thereof may order or direct, the court or a judge may make rules or orders calling upon such third party to appear and state the nature and particulars of his claim, and maintain or relinquish the same.

2. Upon such rule or order the court or a judge may hear the allegations as well of such third party as of the plaintiff, and in the meantime may stay the proceedings in the action. CHAP. 149.

The court or a judge may hear the case, and in the meantime stay the proceedings.

3. The court or a judge may finally order such third party to make himself defendant in the same or some other action, or to proceed to trial on a feigned issue, and may also direct which of the parties shall be plaintiff or defendant on such trial, or with the consent of the plaintiff, or such third party, their counsel or attornies, may dispose of the merits of their claims and determine the same in a summary manner.

The court or judge may make such third party defendant in that or another action, or by consent dispose of the matter on the merits.

4. The court or a judge may make such other rules and orders therein as to costs and all other matters as may appear to be just and reasonable.

Rules and orders may be made as to costs, &c., as are just.

5. The judgment in the issue or action, and the decision of the court or judge in a summary manner, shall be final and conclusive against the parties and all persons claiming under them.

Judgment to be final.

6. If such third party shall not appear upon being duly served with such rule or order to maintain or relinquish his claim, or shall neglect to comply with any rule or order after appearance, the court or a judge may declare such third party, and all claiming under him, barred for ever from prosecuting his claims against the original defendant or his representatives, saving nevertheless the right or claim of such third party against the plaintiff, and may thereupon make such order between such defendant and the plaintiff as to costs and other matters as may appear just and reasonable.

If such third party shall not appear he shall be barred from any claim against the defendant, but not against the plaintiff; power of the court as to costs.

7. Any order made in pursuance of this chapter by a single judge not sitting in open court, shall be liable to be rescinded or altered by the court, in like manner as other orders made by a single judge.

Order of a judge liable to be reviewed by the court.

8. If upon application to a judge, in any stage of the proceedings, he shall think the matter more fit for the decision of the court, he may refer it to the court, and thereupon the court shall hear and dispose of the same, as if the proceedings had commenced by a rule of court instead of the order of a judge.

A judge may at any stage refer the proceedings to the court.

9. Where claim shall be made to any goods taken or intended to be taken under any writ of execution or attachment, issuing out of any court, the supreme court, or any judge thereof, upon application of a sheriff, constable or other officer, made before or after the return of such process, and as well before as after any action brought against such sheriff, constable or other officer, may call before them by rule of court, as well the party issuing such process as the party making such claim; and thereupon exercise for the adjustment of such claims, and the relief and protection of the sheriff, constable or other officer, all or

Provisions of this chapter made applicable to sheriffs, constables, &c.

CHAP. 150. any of the powers and authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case, and the costs of all such proceedings shall be in the discretion of the court.

Rules, orders, &c. to be entered of record, and have the effect of judgments.

10. All rules, orders, matters and decisions, in pursuance of this chapter, excepting only the affidavit to be filed, may, together with the declaration in the cause, if any, be entered of record, with a note in the margin, or an endorsement thereon by the prothonotary, expressing the date of entry, and which shall be evidence thereof. Every rule or order so entered shall have the effect of a judgment, except as to becoming a charge upon lands; and such rules or orders may be enforced by execution as in other cases.

CHAPTER 150.

OF THE PROTECTION OF JUSTICES OF THE PEACE.

Actions against justices to be actions on the case; allegations of malice, &c., necessary in the declaration.

1. Every action against a justice of the peace for any act done in the execution of his office with respect to a matter within his jurisdiction, shall be an action on the case, and it shall be expressly alleged in the declaration that the act was done maliciously and without reasonable and probable cause, and if upon the trial the plaintiff fail to prove such allegation, judgment shall be given for the defendant.

Malice, &c., when need not be alleged; action in such case when only to be brought.

2. If the action be brought for an act done in a matter where he has no jurisdiction, or where he has exceeded his jurisdiction, the party injured thereby or by any act done under a conviction, or order or warrant issued by the justice, need not allege malice or want of reasonable and probable cause in his declaration. But no action in such case shall be brought until such conviction shall have been quashed, nor shall any action be brought for any thing done under any warrant issued by such justice to procure the appearance of a party, which shall have been followed by a conviction or order, until the same shall have been quashed.

Cases in which no action shall lie against the justice for anything done under his warrant.

3. If a warrant shall not have been followed by a conviction or order, or if it be a warrant upon an information for an alleged indictable offence, and a summons had been previously issued and served, and the party did not appear in obedience to the summons, in any such case no action shall be maintained against the justice for anything done under the warrant.

4. Where a conviction or order shall be made by a justice, and a warrant of distress or commitment by some other justice in good faith and without collusion, no action shall be brought against the justice who granted the warrant for any defect in the conviction or order, or for want of jurisdiction in the justice who made it, but the action, if any, shall be brought against the justice who made such conviction or order.

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Justice issuing a warrant not liable to an action where another justice makes an illegal conviction.

5. Where a poor or county rate shall be made, and a warrant of distress shall issue against a person rated therein, no action shall be brought against the justice who granted the warrant for any irregularity or defect in the rate, or by reason of any such person not being liable to be rated.

Justice granting a warrant of distress for a rate not liable for any deficiency in the rate.

6. Where a justice shall refuse to do any act relating to the duties of his office, the party requiring such act to be done may apply to the supreme court, upon affidavit of the facts, for a rule calling upon the justice, and also upon the party to be affected by such act, to shew cause why such act should not be done; and if after service of such rule good cause be not shewn against it, the court may make the rule absolute, with or without costs as they may see meet, and the justice, upon being served with the rule absolute, shall obey the same and do the act required. No action or proceeding shall be commenced or prosecuted against such justice for having obeyed such rule.

Supreme court may compel a justice by rule to do an act relating to his office; proceedings in such case, how taken.

7. Where a warrant of distress or of commitment shall be granted by a justice upon conviction or order, which either before or after the granting the warrant shall have been confirmed upon appeal, no action shall be brought against the justice granting the warrant for anything done thereunder, by reason of any defect in such conviction or order.

No action shall be brought against a justice for granting a warrant upon a defective conviction, &c., confirmed by appeal.

8. If any action shall be brought in a case where by this chapter it is forbidden, a judge of the court where it is brought, upon application of the defendant upon affidavit, may set aside the proceedings with or without costs, as he shall see fit.

Actions brought when forbidden may be set aside.

9. No action shall be commenced against a justice for any thing done in the execution of his office, until one month at least after notice in writing of such intended action shall have been delivered to him or left at his usual place of abode, by the party intending to commence the action, his attorney or agent, in which notice the cause of action, and the court in which it is intended to be brought, shall be explicitly stated, and upon the back thereof shall be endorsed the name and place of abode of the party intending to sue, and the name and place of abode or of business of the attorney or agent, if the notice has been served by an attorney or agent; and the venue in every such action shall be laid in the county where the act com-

Month's notice to be given a justice before action brought; contents of notice; limitation of action.

CHAP. 150. plained of was committed; and such action shall be brought within six months next after the cause of action shall have accrued.

Justice may tender amends or pay money into court; proceedings in such case.

10. After notice so given, and before action commenced, such justice may tender to the party complaining, his attorney or agent, such sum of money as he may think fit as amends for the injury complained of in the notice; and after action commenced, and before issue joined, the defendant, if he have not made a tender, or in addition to the tender, may pay money into court; and the tender and payment into court or either of them may be given in evidence on the trial. If the jury shall be of opinion that the plaintiff is not entitled to damages beyond the sum tendered or paid into court, then they shall find a verdict for the defendant, and the plaintiff shall not be at liberty to elect to be non-suit; and the sum so paid into court, or so much thereof as shall be sufficient to satisfy the defendant's costs, shall thereupon be paid out of court to him, and the residue, if any, be paid to the plaintiff; or if the plaintiff shall elect to accept the money so paid into court in satisfaction of damages in the action, he may obtain a judge's order for the money, and that the defendant shall pay him his costs to be taxed, and thereupon the action shall be determined, and the order shall be a bar to any other action for the same cause.

Proof required on the part of the plaintiff.

11. If at trial the plaintiff shall not prove the action brought within the time limited in that behalf, or that the notice was not given a month before action commenced, or if he shall not prove the cause of action stated in such notice, or that it arose in the county laid as venue in the margin of the declaration, the plaintiff shall be non-suit or the jury shall give a verdict for the defendant.

If plaintiff on trial is proved guilty of the offence of which he was convicted, and has suffered no undue punishment, he shall recover nominal damages only.

12. In all cases where the plaintiff shall be entitled to recover, and he shall prove the levying or payment of any penalty or sum of money under any conviction or order as part of his damages, or if he prove an imprisonment thereunder, he shall not be entitled to recover the amount of the penalty or sum levied or paid, or any damages beyond three cents for such imprisonment, or any costs of suit, if it shall be proved that he was actually guilty of the offence of which he was convicted, or that he was liable to pay the sum he was so ordered to pay, and with respect to the imprisonment that he had undergone no greater punishment than that assigned by law for the offence of which he was convicted or for the non-payment of the sum he was so ordered to pay.

Cases where plaintiff on recovery of damages shall have full costs.

13. If the plaintiff recover a verdict or the defendant allow judgment to pass by default, the plaintiff shall recover costs as if this chapter had not passed. If it be stated in the declaration that the act complained of was done maliciously and without reasonable and probable

cause, the plaintiff, if he recover a verdict for any damages, CHAP. 151. or if the defendant allow judgment to pass by default, shall be entitled to full costs.

CHAPTER 151.

OF THE PROTECTION OF CONSTABLES.

1. Before any action shall be brought against a constable, police, or other officer, or any person acting in his aid, and for anything in obedience to a warrant under the hand and seal of a justice, mayor or alderman, a demand in writing of the perusal and copy of such warrant, signed by the person making the same shall be served upon him personally or left at his usual place of abode for the space of six days.

Demand of perusal and copy of warrant to be served upon constable, &c. before action brought.

2. If after such demand and a compliance therewith, an action be brought against such constable or other officer, or person acting in his aid, without making the justice a party thereto, on the proof of such warrant upon the trial, judgment shall be given for the defendant, notwithstanding any want of jurisdiction in the justice. If the action be brought against the constable or other officer, or person acting in his aid jointly with the justice, then on proof of such warrant, judgment shall be given for the constable, other officer or person acting in his aid; and if a verdict pass against the justice the plaintiff shall recover costs to be taxed so as to include the costs he may be liable to pay to the other defendant.

If justice not made a party when notice complied with defendant shall have judgment; proceedings where action against justice and constable.

3. No action shall be brought against a constable, or other officer or person acting in his aid, unless the same be commenced within six months next after the cause of action shall have accrued.

Limitation of action.

CHAPTER 152.

OF MADMEN AND VAGRANTS, AND OF THE CUSTODY AND ESTATES OF LUNATICS.

1. Any madman may be apprehended under warrant from two justices of the peace, and if his legal settlement shall be in any place within the county he shall be secured within the same, and if such settlement be not within the

Madmen may be apprehended and sent to the place of their last settlement; expenses how provided for.

CHAP. 152. county, he shall be sent by the justices, by order under their hands, to the place of his last legal settlement, and shall be there secured under a warrant from two justices of the peace for the county to which he shall be so removed, and the charges of removing, maintaining, and curing such person during his restraint, being first proved on oath before two justices, shall be paid out of the proceeds of the personal property, or the rents of the real estate of such person, if any he have, over what will maintain his family; and which property or rents may for that purpose be seized and sold by the overseers of the poor of the place of such person's last legal settlement, under a warrant from two justices; and if such person hath not any property or rents applicable therefor, then such expenses shall be borne by the inhabitants of the district within which such person shall have his last legal settlement, in the same manner as if he were a pauper chargeable to such district.

Common vagrants, who shall be deemed such; how punished.

2. Persons who unlawfully return to any place whence they have been legally removed as paupers, and idle and wandering persons having no visible means of subsistence, and persons going about to beg alms, shall severally be deemed common vagrants; and may be brought up and summarily convicted by a justice of the peace, and thereupon imprisoned for not more than one month.

Guardians how appointed for insane persons.

3. When the relations or friends of any insane person, or the overseers of the poor of the township of which he is an inhabitant, shall apply to the supreme court or a judge thereof to have a guardian appointed for him, notice shall be given to such insane person of the time and place appointed for hearing the case, not less than fourteen days before the time so appointed; and if after a full hearing it shall appear to the court or judge that the person in question is incapable of taking care of himself, such court or judge shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified. Every guardian so appointed shall have the care and custody of the person of the ward and the management of his estate until legally discharged.

Allowance for expenses incurred by ward.

4. When a guardian shall be appointed for an insane person the court or judge shall make an allowance to be paid by the guardian out of the estate of the insane person for all reasonable expenses incurred by the ward in defending himself against the complaint.

Debts and expenses, how provided for; powers of guardian.

5. Every guardian of an insane person shall pay all just debts due from the ward out of his personal estate, if sufficient; and if not, out of his real estate, upon obtaining a license for the sale thereof from the supreme court or any judge thereof. He shall also settle all accounts of the ward, and sue for and receive all debts due to him, or may compound for the same, and give discharge to the debtors; and

he shall appear for and represent the insane person in all legal suits and proceedings. CHAP. 152.

6. The guardian shall also manage the estate frugally and without waste, and apply the profits thereof, as far as may be necessary, to such insane person's comfortable and suitable maintenance, and that of his family; and if such profits be insufficient, the guardian may sell or mortgage the real estate upon obtaining a license therefor, and shall apply the proceeds, so far as may be necessary, for the maintenance and support of such insane person and his family.

Duty of guardian as to the ward, his family, &c.

7. On a sale taking place under a license to sell the real estate of an insane person, the guardian shall execute in the name of the insane person a deed thereof, which shall convey the same to the purchaser either absolutely or by way of mortgage as therein specified, in the same way as if executed by himself when of sound mind.

Deeds of real estate to be made by guardian.

8. When any guardian so appointed shall remove from the province, or become insane or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the supreme court or a judge thereof, after notice to such guardian, if resident in the province, and to all others interested, may remove him; and every guardian may, upon his request, be allowed to resign his trust, when it shall appear to the court or a judge proper to allow the same; and upon every such resignation or removal, and also upon the death of any guardian, the court or a judge may appoint another in his stead.

Guardians, how removed; new guardians, how appointed.

9. Every guardian shall give bond with sureties to her majesty, with the following conditions:

Guardians to give bonds to her majesty; conditions set forth.

First.—To make a true inventory of all the real estate, and all the goods, chattels, rights and credits of the insane person that shall come to his knowledge, and to return the same into the supreme court at such time as the judge shall order.

Secondly.—To dispose of and manage all such estate and effects, according to law, and for the best interests of the insane person, and faithfully to discharge his trust in relation thereto.

Thirdly.—To render an account on oath of the property in his hands, including the proceeds of all real estate sold by him, and of the management and disposition of all such property, within one year after his appointment, and at such other times as the judge shall direct; and—

Fourthly.—At the expiration of his trust to settle his accounts with the court or a judge, or with the insane person in case of his restoration to reason, or in case of his death with his legal representatives, and to pay over and deliver all the estates and effects remaining in his hands or due from him on such settlement to the person lawfully entitled thereto.

CHAP. 152.

Finding of jury
on trial of in-
sane persons.

10. In all cases where it shall be given in evidence, upon the trial of any person charged with treason, murder, or felony, or any misdemeanor, that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity, and if they shall find that such person was insane at the time of the committing such offence, the court before whom such trial shall be had shall order such person to be kept in strict custody, in such place and in such manner as to the court shall seem fit, until the pleasure of the governor in council shall be known; and it shall thereupon be lawful for the governor in council to give such order for the safe custody of such person during his pleasure in such place and in such manner as to the governor in council shall seem fit; and in all cases where any person has been acquitted of any such offence on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person, by order of the court before whom such person has been tried, and shall remain in custody, it shall be lawful for the governor in council to give the like order for the safe custody of such person during his pleasure, as he is hereby enabled to give in the cases of persons who shall hereafter be acquitted on the ground of insanity.

Proceedings on
arraignment of
insane persons.

11. If any person indicted for any offence shall be insane, and shall, upon arraignment, be found so to be, by a jury lawfully empanelled for that purpose, so that such person cannot be tried upon such indictment, or if, upon the trial of any person so indicted, such person shall appear to the jury charged with such indictment, to be insane, it shall be lawful for the court before whom any such person shall be brought to be arraigned or tried as aforesaid, to direct such finding to be recorded; and if any person charged with any offence shall be brought before any court, to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such court to order a jury to be empanelled to try the sanity of such person, and if the jury so empanelled shall find such person to be insane, such person shall at once be apprehended and dealt with as in the last preceding section directed.

Expenses, how
paid.

12. The reasonable expense of apprehension and removal being verified on oath before the custos, or any two justices of the peace, either before or after such removal, and by them allowed, shall, upon their order, be paid by the county treasurer out of the county funds to the person appointed to apprehend and remove such insane person, and such expenses shall afterwards be levied by warrant of

distress, to be signed by two justices of the peace, on any goods or chattels of such insane person, or may be realized out of the real estate of the insane person, or the rents thereof, as provided in this chapter; and for want of such property shall be a charge against the county in which such insane person had his last legal settlement as hereinafter mentioned. CHAP. 152.

13. And for the better prevention of crime being committed by persons insane, if any person shall be discovered and apprehended under circumstances denoting a derangement of mind, and a purpose of committing some crime, for which, if committed, such person would be liable to be indicted, it shall be lawful for any two justices of the peace of the county, before whom such person may be brought, to call to their assistance any legally qualified physician or surgeon, and if, upon order and examination of the said person so apprehended, or from other proof, the said justices shall be satisfied that such person is insane, or a dangerous idiot, it shall be lawful for the said justices, by warrant under their hands and seals, to commit such person to the jail of the county, there to be kept in strict custody until such person shall be discharged by the order of two justices of the peace, one whereof shall be one of the justices who has signed such warrant, or by one of the judges of the supreme court, or until such person shall be removed, by order of the governor in council, to a proper lunatic asylum, or to the custody of guardians appointed under this chapter.

Apprehension,
committal, &c.
of insane per-
sons.

14. Any two justices may enquire into and ascertain, by the best legal evidence that can be procured under the circumstances, of the personal legal disability of such insane person or dangerous idiot, the place of the last legal settlement of such person, or of any other person now or hereafter tried and acquitted on the ground of insanity, or of any person so found insane, under any of the provisions of this chapter; and it shall be lawful for the said two justices to make an order, under their hands and seals, upon the overseers of the poor of such township or place where they adjudge him to be legally settled, to pay all reasonable charges of examining such person and conveying him to such county jail, and to pay such weekly sum for his maintenance in such place of custody as they, or any two justices, shall, by writing under their hands, from time to time direct; and where such place of settlement cannot be ascertained, such order shall be made upon the treasurer of the county where such person shall have been in custody or apprehended: provided always that nothing herein contained shall be construed to extend to restrain or prevent any relation, guardian or friend from taking such insane person or dangerous idiot under his own care and protection, if he shall enter into sufficient recognizance for his peaceable behaviour or safe custody, before two justices of

Assessment for
the mainte-
nance, &c. of
such insane
persons.

CHAP. 152. the peace, or the court of sessions, or one of the judges of the supreme court: provided also, that the overseers of the poor of the township or place in which the justices shall adjudge any insane person or dangerous idiot to be settled, may appeal against any such order, to the next general or special sessions to be holden for the county where such order shall be made, in like manner, and under the like regulations and restrictions as against any order of removal, giving reasonable notice thereof to the clerk of the peace of the county upon whose rates the burthen of maintaining such insane person or dangerous idiot might fall if such order should be invalid; and such clerk of the peace shall be respondent in such appeal, which appeal the justices of the peace assembled at the said general or special sessions are hereby authorized and empowered to hear and determine in the same manner as appeals against orders of removal are now heard and determined.

Appeal.

Expenses incurred, &c. to be paid out of the estate of the insane person.

15. All charges hereinbefore mentioned, that may be incurred by any overseers of the poor for any township or place, or by any county, under this chapter, the same being first proved on oath before two justices, shall be repaid to the said overseers, or to the treasurer of the county, respectively, as the same may have been incurred, out of the proceeds of the personal property, or the rents of the real estate, or, if necessary, the real estate itself, of such insane person or dangerous idiot, if any he have over what will maintain his family, which may, for that purpose, be seized and sold by the said overseers or county treasurer, under a warrant from two justices.

Physician when qualified to act.

16. Any person shall be deemed a legally qualified physician or surgeon, for the purposes of this chapter who would not be disqualified from recovering a fee or reward for his professional services, by chapter fifty-six.

LUNATIC ASYLUM.

Title, object, management, visitors &c.

17. The title of the above institution shall be the "provincial hospital for the insane," and its object shall be the most humane and enlightened curative treatment of the insane of this province. The financial and general management of the hospital, shall be vested in the board of works. The governor in council may at any time instruct or restrain the board whenever it shall be necessary to ensure economy, to enforce discipline, or to protect the inmates of the asylum. The undermentioned persons shall be *ex officio* visitors of the hospital, namely, the governor, the chief justice, the provincial secretary, the president of the legislative council, the speaker of the house of assembly, and the heads or authorized representatives of all the christian churches in this province. The board of works shall make all needful bye-laws for the government of the hospital, not inconsistent with the laws of the pro-

vince. But before such bye-laws shall have effect they shall be submitted to and approved by the governor in council. CHAP. 152.

18. The governor in council shall appoint a medical superintendent, whose salary shall be two thousand dollars per annum, without board and lodging. Medical superintendent, his salary.

19. The medical superintendent under the general direction and with the concurrence of the board of works shall from time to time appoint such persons as he may deem qualified, to perform the duties of the various departments connected with the institution and premises, and shall determine their rate of salaries and wages. To appoint subordinate officers, &c.

20. The medical superintendent shall be the chief executive officer of the hospital. He shall be a well educated physician, and shall with his family, reside on the premises, and devote his whole time to the welfare of the institution. Medical superintendent to reside on premises.

21. The expenses of all pauper lunatics now or hereafter to be confined in the hospital for the insane, shall be chargeable on the respective counties or districts, in which they shall have obtained a legal settlement, and the same shall be a county or district charge to be assessed, levied and collected in the same manner as county rates. Pauper lunatics—expense of.

22. In case the grand jury and sessions of any county which shall be liable for the expenses of lunatics confined in the asylum, shall refuse or neglect to assess the county therefor, the supreme court shall, upon application, amerce such county for the amount due, which, with the costs and expenses attending such amercement, shall be assessed, levied and collected, under the order of the supreme court by the same persons whose duty it shall be to assess, levy and collect the county rates, and in the same manner; and the same when collected shall be paid to the parties respectively entitled thereto. In case of refusal or neglect to assess, court shall amerce.

23. If the guardians, or other parties to whom the expense of any patient who shall be in the hospital is chargeable, shall neglect, or upon demand made shall refuse to pay to the receiver general the expense of the care, maintenance and removal of such patient, and also in the event of death, the funeral expenses of such patient, the board of works are hereby authorized and empowered to collect the same as debts of a like nature are now collected. How collected &c.

24. Whenever any person shall be so deranged in his intellect that he cannot be permitted to go at large without danger, or is suffering unnecessary duress or hardship, it shall be the duty of any two justices of the peace of the county in which such insane person may be found, on being applied to for that purpose, to investigate the case, and summon to their assistance any one or more medical practitioners, duly qualified and practising within the In case patients are not paid for.

Mode of proceeding to convey insane person to hospital for insane.

CHAP. 152. province, and if such insanity be proved and certified by such medical practitioner or practitioners in writing, the sheriff or justices shall issue their warrant directed to any constable of the county, who shall apprehend and convey such insane person to the provincial hospital for the insane. In case such person shall have been certified to be insane by only one medical practitioner before his apprehension, he shall be again examined by two duly qualified medical practitioners, to be appointed by the commissioners, before he shall be admitted into the hospital. Such medical certificates to be in the form in schedule to this chapter.

If certified by one medical man, to be examined before admission.

In case of vacancies board may admit patients.

Board of works may make special agreements regarding board of patients.

In case of indigent patients whose friends cannot continue to pay.

In case of estate of insane persons not sufficient for his expenses, they may be paid out of the funds of hospital.

Charges against patients.

Discharge of patients.

25. Whenever there are vacancies in the hospital, the board of works may admit, under special agreement, cases for which admission is sought, a preference being given to those of most recent occurrence, and hence most likely to be benefitted by hospital treatment.

26. The board of works in the case of patients in whose behalf admission is sought into the hospital, and where, in their judgment, there are circumstances justifying a departure from the ordinary rates, may make special arrangements for the amount and payment of board.

27. When an insane person in indigent circumstances, whose insanity shall have commenced within a year prior to his or her admission, shall have been sent to the hospital by friends who have paid their bills therein for six months, upon an application under oath in his or her behalf, stating the inability to pay of the parties legally liable for his or her support, the application being endorsed by the medical superintendent, the general sessions of the county of legal settlement of such insane person, are authorized and required to raise a sum of money sufficient to defray the expenses of such insane person for one year, and to pay the same to the receiver general, and they shall repeat the same for two succeeding years, upon like application, duly verified.

28. Whenever the real and personal estate of any lunatic or insane person, not being a pauper, or of his or her husband, father, or mother, is not more than sufficient to maintain the family of any such person, the expenses of the maintenance of the insane person in the hospital may be defrayed in whole or in part from the funds of the hospital, as the commissioners may, on investigation, order and direct.

29. Indigent persons and paupers shall be charged for medical attendance, board, and nursing, while residents of the hospital, no more than actual cost; and patients who are not chargeable upon townships, districts, or counties, shall pay according to the terms directed by the commissioners having relation to the accommodation desired and afforded.

30. The board of works, upon the medical superintendent's certificate of recovery, amendment, harmlessness, or

unsuitableness, may discharge any patient, except those under a criminal charge, and the parties liable for the maintenance of such patients shall be duly notified of such discharge, and the terms thereof. Provided that patients under criminal charge shall be discharged only by an order from the governor in council. CHAP. 152.

31. Parties committing insane patients to the hospital shall execute a bond, with sufficient security, for payment of expenses, which bond may be sued as often as shall be necessary, and recovery had agreeably to chapter respecting summary suits.

Proviso.

Bond for expenses.

32. No medical man shall be held responsible to any patient or their representatives for any certificate thus granted.

Medical man not responsible for certificate.

33. Resident officers and other employees of the hospital, while actually engaged as such, shall be exempt from militia duty, from serving on juries, from county and township offices.

Resident officers, exemption of.

34. In case the board of works hereafter shall require any further lands or privileges, or to re-enter and re-open lands where the pipes are laid, the proprietors or occupiers shall be entitled to such compensation as may be agreed upon with the board of works, and in case of no agreement being entered into, either party may proceed in such case, in the same manner as directed for the first occasion by chapter forty-one acts of eighteen hundred and fifty-nine, which shall be considered in force for that purpose.

In case board of works require other lands, &c. or to re-open where pipes are.

35. The governor in council may order the board of works to proceed with the erection and furnishing that portion of the hospital designed for unruly patients, and may pay for the same out of the ordinary revenues, or may borrow the necessary funds on debentures of such amount at such rate of interest not exceeding six per cent, and redeemable at such times as the governor in council may direct, or in such a manner as may be most advisable.

Governor and council may authorize erection of portion for unruly patients. May borrow funds.

Repayment.

36. The medical superintendent, and employees of the lunatic asylum shall not be liable to perform statute labor.

Employees exempt from statute labor.

SCHEDULE.

Form of medical certificate.

I, the undersigned [*name in full*] being [*state qualification*] and in actual practice, hereby certify that I, on the — day of —, 18—, at [*state locality*], personally examined —, of [*state residence and occupation*], and that the said — is a person of unsound mind, and a proper person to be taken charge of, and detained under care and treatment, and that I have formed this opinion upon the following grounds, viz.:

1. Facts indicating insanity observed by myself: [*here state appearance, conduct and conversation*.]

CHAP. 153. 2. Facts indicating insanity communicated to me by others: [*state the information and from whom.*]

(Signed) _____

Dated at _____, this _____ day of _____, A.D., 18—. [*Two certificates are required in every case. Each examination should be separate.*]

CHAPTER 153.

OF THE LIBERTY OF THE SUBJECT.

For removing doubts:

Certain acts of imperial parliament to have force in this province

1. The act of the imperial parliament, passed in the the thirty-first year of the reign of king Charles the second, entitled "an act for the better securing the liberty of the subject and for the prevention of imprisonment beyond the seas," and the act of the imperial parliament, passed in the fifty-sixth year of the reign of king George the third, entitled "an act for more effectually securing the liberty of the subject," and all acts of the imperial parliament passed in addition to, or amendment of, or on the same subject as the said recited acts, or either of them, have full force and effect in this province as far as are applicable within this province; and the supreme court and the judges thereof have the same authority and power over cases within the purview of the said acts here as the courts mentioned in the said acts and the judges thereof have in England; and the rights and remedies, and the obligations, punishments and penalties conferred and imposed by the said statutes, or either of them, are conferred and imposed upon and made applicable to persons within this province, as fully as if the said acts were re-enacted and specially extended to the courts, judges, officers, and to persons within this province.

Judges of supreme court same power as judges in England.

Rights, &c., conferred on inhabitants of this province.

Not to take away common law right to habeas corpus.

Habeas corpus may be granted by a judge or the court.

Preamble.

2. The preceding enactment shall not be construed to abrogate or abridge the remedy by the writ of habeas corpus at common law, but the same exists in full force, and is the undoubted right of the people of this province.

3. The writ of habeas corpus, whether under statute or common law, may be applied for to and be granted by a judge of the supreme court, returnable before himself or returnable before the court, and may be applied for to and may be granted by the court, returnable to itself or to a judge in vacation; and whereas, provisions may be made for affording further facilities for relief in case of persons illegally restrained of their liberty, especially where it would be attended with unnecessary delay, expense, or

inconvenience, in bringing the body of the party before the court or judge, CHAP. 153.

4. Therefore, upon sufficient cause shewn to the court, or to any judge of the supreme court, by or on behalf of any person confined in any jail or prison, such court or judge may, in the discretion of the court or judge, and is hereby empowered, (instead of granting fiat for a writ of habeas corpus *cum causa* requiring the keeper of such jail or prison to bring the prisoner before the court or judge in order that the legality of such imprisonment may be enquired into and discharge, bailment or recommitment had thereon,) by rule of the said court, or by order of the judge in writing, signed by him with his name, addition of office, and place of residence, to require and direct such keeper to return to the court or to the judge whether or no such person is detained in prison, together with the day and cause of his having been taken and detained.

Court or judge may give rule or order instead of writ.

5. It shall be the duty of such keeper immediately upon the receipt of such order to make a true and full return in writing to the court, or to such judge, of the day and cause of such taking and detention to the same effect as a return to a writ of habeas corpus would now be made; such return always to include a copy of the process, warrant or order, upon which the said prisoner is held, where the same is of a criminal nature, or upon any summary complaint or conviction before any justice of the peace; and such judge may enforce obedience to such order by process of contempt, in the same manner as he may compel proper return to be made to a writ of habeas corpus.

Duty of keeper on receipt of order.

6. Upon return to such order, the court or judge may proceed to examine into and decide upon the legality of the imprisonment, and make such order, require such verification, and direct such notices or further returns in respect thereof as may be deemed necessary or proper for the purposes of justice; and may by rule of court or by order in writing signed as aforesaid, require the immediate discharge from prison, or may direct the bailment of such prisoner in such manner and for such purpose and with the like effect and proceeding as is now allowed upon habeas corpus; such bail when ordered, to be entered into before any justice of the peace specially named in such order, or any justice of the county or place where there is no such nomination.

Upon return of order court or judge may proceed.

7. It shall be the duty of such keeper immediately upon the receipt of any rule of court or order of a judge in relation to a prisoner in custody, to communicate the same to such prisoner and to give him a true copy thereof if demanded, and to obey the requirement of the same.

Keeper to report order to prisoner and furnish copy.

8. In all cases whether under statute or at common law or under the provisions of this chapter, it shall be lawful for the court or a judge to require the production of all

Court or judge may require production of proceedings, documents, &c.

CHAP. 153. such proceedings, documents and papers, relating to the matter in question, before whomsoever and in whosoever possession as to the court or judge may appear necessary for the elucidation of the truth, and may also examine into the truth of the return to any writ of habeas corpus, or rule or order granted under this chapter, in the same manner as such examination is provided for in cases under the before mentioned act of parliament, passed in the fifty-sixth year of the reign of king George the third.

Wilful neglect or disobedience of judge's order a misdemeanor

9. Every wilful neglect or disobedience of a rule of court, or the order of a judge in relation to a prisoner, shall be deemed a misdemeanor, and punishable as such by fine and imprisonment, or either, at the discretion of the court.

Return may be heard by any other judge.

10. The matter of the return made to the order of a judge may be heard and decided on by any other judge of the supreme court, who shall have the same power and jurisdiction in respect thereof as the judge by whom the first order was made.

Order not to enable keeper to discharge for other matter.

11. No order made under this chapter shall require or enable the keeper of any jail or prison to discharge the prisoner from any commitment or charge other than that specified in such order, but it shall be the duty of such keeper in every return to specify the several causes of commitment and detention, if more than one; and if between the time of making the return and receiving an order for the discharge or bailment, any other warrant, process or order shall have been delivered to him, requiring the detention of the prisoner upon any charge of a criminal nature, or summary complaint or conviction, such keeper shall without any further order make and transmit to the court or judge an additional return, with a copy of such warrant, process or order, and the time of receiving the same, which may be dealt with by the court or judge as if made pursuant to an order for that purpose granted.

This chapter not to prevent civil action.

12. Nothing in this chapter contained shall extend or be construed to deprive any person who may have been falsely imprisoned from his remedy by civil suit against any person who may have illegally caused such imprisonment, but the court or judge by whom relief may be afforded may by his order exempt any such keeper of a jail from civil suit who may appear to him to have acted upon the warrant or order of any judge or justice, according to the requirements of the same, without malice or evil intent, although such warrant or order may be bad in form or substance; and any such order of exemption may be pleaded in bar to any action brought against such keeper or notice given thereof as an additional ground of defence under any act of this province in such case made and provided.

See act 1865-Cap 10-

TITLE XXXIX.

See act 1866-Cap 12

CHAPTER 154.

OF THE LIMITATION OF ACTIONS.

1. No action of assumpsit, trespass *quare clausum fregit*, detinue, trover, replevin, debt grounded upon any lending or contract without specialty or for rent, account, or upon the case, shall be brought but within six years next after the cause of action.

Actions which require to be brought within six years.

2. In actions grounded upon any simple contract, no acknowledgment or promise, by words only, shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the preceding section, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be in some writing signed by the party chargeable thereby; and where there shall be two or more joint contractors or executors or administrators of any such contractor, no such joint contractor, executor or administrator, shall lose the benefit of the preceding section by reason only of any written acknowledgment or promise made or signed by any other of them. But nothing herein contained shall alter or take away, or lessen the effect of any payment of any principal or interest made by any person whomsoever; and in any action to be commenced against two or more joint contractors, or executors or administrators, if it shall appear at the trial or otherwise that the plaintiff though barred by this provision as to one or more of such joint contractors, or executors or administrators, shall nevertheless be entitled to recover against any other of the defendants, by virtue of a new acknowledgment or promise or otherwise, judgment may be given and costs allowed for the plaintiff, as to such defendant against whom he shall recover, and for the other defendants against the plaintiff.

A promise to take a case out of the statute must be in writing; joint contractors, co-executors, &c., how affected by promise of several contractor, co-executor, &c.

See act 1865-Cap 10- Sec 9.

3. If any defendant in any action on any simple contract, shall plead any matter in abatement, to the effect that any other person ought to be jointly sued, and issue be joined on that plea, and it shall appear at the trial, that the action could not by reason of this chapter be maintained against the other person named in such plea, the issue joined in such plea shall be found against the party pleading the same.

Issue on plea in abatement for non-joinder under this chapter, how found.

4. No endorsement or memorandum of any payment, written or made upon any promissory note, bill of exchange or other writing, by or on behalf of the party to whom

Endorsements by payee not evidence.

CHAP. 154. such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation thereof.

Set-off due on simple contract within the statute.

A promise after full age to pay a debt contracted while a minor must be in writing.

*See act-1845
Cap 10-sec 9*

In case of mutual accounts accruing of the cause, how computed.

Actions which require to be brought within one year.

Actions against minors, &c., within what time to be brought.

When judgment reversed or arrested, when new action may be brought.

Entry upon and action for lands to be within twenty years.

Minors and persons under disabilities, within what time allowed to bring actions.

Actions and claims of her majesty limited to sixty years.

5. This chapter shall apply to the case of any debt on simple contract, alleged by way of set off on the part of any defendant, either by plea, notice or otherwise.

6. No action shall be maintained whereby to charge any person upon any promise, made after full age, to pay any debt contracted during infancy, or upon any ratification after full age, of any promise or simple contract made during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

7. In an action to recover a balance due upon a mutual open and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed hereafter to accrue from the time of the last item proved in the account claimed, or proved to be chargeable on the adverse side.

8. No action of trespass for assault, battery, wounding or imprisonment, and no action on the case for words, and no action or prosecution for taking illegal interest, shall be commenced but within one year next after the cause of action, or after the offence was committed.

9. Actions by or against minors, married women, persons insane, imprisoned or out of the province, may be commenced within the like period after the removal of the disability, as is allowed for bringing the action in ordinary cases.

10. If in any action judgment be given for the plaintiff, and the same be reversed by error, or if judgment be arrested after verdict, then the plaintiff may commence a new action within one year after such judgment reversed or arrested.

11. No entry into any lands shall be made, or action therefor brought, but within twenty years after the right descended, or cause of action accrued.

12. Minors, married women, persons insane, imprisoned or out of the province, being and continuing under such disability, may make such entry or bring such action within ten years after the removal thereof. But no such action shall be brought or entry made but within forty years after the right or action shall have descended or accrued.

13. No claim for lands or rent shall be made by her majesty, but within sixty years after the right of action to recover such lands or rent shall have accrued.

*See act-1845
Cap 12-sec 18*

TITLE XL.

Amended CHAPTER 155. *in 1865. Cap 1 Sec 16*

OF COSTS AND FEES.

1. Fees for the services mentioned in the schedule to this chapter shall be as therein prescribed.

2. Any person taking greater fees shall, for each offence, forfeit to the party aggrieved forty dollars; which sum, with such excessive fees, may be recovered by him in an action for debt.

3. Actions for such forfeitures shall be brought in the county where the offence was committed, and within six months next after the date of such offence.

4. The prothonotaries shall, whenever required, furnish to the attornies or parties requiring the same, a bill of the items of his own, the crier's and constable's fees, on penalty of twenty dollars; and nothing shall be taxed for such fees if the demand be made and not complied with before taxation of the costs in the cause.

SCHEDULE.

Fees to be taken at the provincial secretary's office, and paid into the treasury.

Each certificate, under the hand of the governor and the great seal of the province, four dollars.

Each certificate, under the hand of the governor and the seal at arms, two dollars.

Each certificate, under the hand and seal of the provincial secretary, one dollar.

Every search, twenty cents.

Copies of grants, proceedings in council, or other papers, per folio, ten cents.

Prothonotary's fees.

Entering action, filing oath, warrant or preceipe,	\$0 50
Sealing and signing every writ, execution, or other process,	0 20
Filing every writ and entering return,	0 10
Filing declaration and all other pleadings,	0 10
Entering appearance,	0 30
Entering and filing every rule of court,	0 10
Copy of every rule when given by prothonotary,	0 10
For drawing and striking a special jury, and for copies of the lists furnished to the respective parties and all other services connected therewith,	2 00

CHAP. 155. Swearing and impanelling jury,	\$0 20
Swearing each witness or constable,	0 10
Taking and entering verdict,	0 20
Entering judgment,	0 40
The prothonotary at Halifax, for the entry of a judgment not belonging to the supreme court at Halifax, and for the transcript thereof,	0 50
Filing retraxit or discontinuance,	0 10
Copies of all papers, per folio,	0 10
Every exhibit in a cause filed in court,	0 06
Taking affidavit in court,	0 20
Filing affidavit,	0 10
Searching records,	0 10
Entering every default,	0 10
Drawing and taking every recognizance,	0 20
Entering every non-suit,	0 10
Sealing and signing every subpœna,	0 20
Every ticket,	0 10
Continuance of every cause,	0 20
Filing the roll in every cause,	0 20
Taxing bill of costs,	0 20
Copy of docket and certificate of judgment,	0 50
Ditto of discharge of ditto,	0 20
In judgments on undefended declaration cases, by confession or default,	2 50
In judgments on undefended foreclosure cases,	3 50

In summary and appeal suits.

Signing and sealing writs,	0 50
For all other services, including final judgment, when not tried by a jury,	0 50
For every alias summary writ and præcipe,	0 40

In sub-summary suits.

Signing and sealing writ,	0 20
Signing judgment,	0 30
Every subpœna or ticket,	0 10

No commission shall be allowed or deducted from money paid into court under any rule or plea.

For appointment of power of Commission on Cap 123, Sec 14.
Commissioner's fees.

For administering oath,	0 20
For marking writ,	0 20
Taking depositions of witnesses, each witness,	1 00
And for taking depositions, per folio,	0 10
Travelling fees, when necessary, per mile.	0 05

8 Sept 1866. Examiners fees to be the same as Commissioners.
Sheriff's fees.

Serving summons and making return thereof,	0 70
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		ЧІАП. 155.
Serving every other writ of <i>mesne process</i> or <i>scire facias</i> , and making return thereof,	\$1 00	
Serving every execution and making return thereof,	1 00	
Returning every execution where the same has not been served,	0 30	
Serving every writ of possession and making return thereof,	3 00	
Travel per mile from the place of residence of the sheriff to the place where he shall serve a writ,	0 10	
Two cents per mile from the place of residence of the sheriff to the court house where the writ is returnable, provided the same be out of the county, and also provided the writ be actually served.		
Every bail bond,	0 60	
Summoning a jury in each cause,	0 50	
Executing writ of inquiry, summoning jury, and making return,	2 00	
Returning every special jury,	3 00	
On execution or attachment where a sale shall take place extended on personal property, sale and payment of the money to the party or his attorney, as follows :		
For any sum not exceeding \$200, five cents in the dollar.		
From \$200 to \$400, four cents in the dollar.		
For all above \$400, two and a half cents in the dollar.		
In cases where there shall be no sale, one half the above fees on actual payment of the money.		
For making inventory of goods attached, such reasonable fees as shall be taxed by the court out of which the writ shall have issued.		
For certifying copy of attachment levied on real estate and making and delivering to the registrar of deeds copy of the appraisement of the real estate,	1 00	
On the sale of all real estate, whether by virtue of an execution or attachment, or by virtue of any rule or order, and payment of the proceeds to party or his attorney, two and a half cents the in the dollar.		
Every deed,	2 00	
Bringing up prisoner by <i>habeas corpus</i> ,	1 00	
Attending prisoner before judge on any special occasion,	0 75	
For every member returned duly elected to serve in general assembly, to be paid out of the treasury in lieu of all other expenses chargeable upon the treasury,	6 00	
For summoning the grand and petit juries, a sum not exceeding \$20 for both juries, if allowed by the grand jury and approved by the sessions.		

CHAP. 155.*Appraiser's fees.*

For appraising goods or real estate taken under attachment, each appraiser,	\$0 50
When property is extensive and complicated, for each day actually employed, each appraiser,	0 70

Juror's fees.

Petit and special jurors, per day,	0 50
Travel per mile from place of residence to court house,	0 10

Witness' fees.

For attendance, per day,	0 50
Travel per mile, coming and going,	0 05
To be the same in every court.	
Plaintiff or defendant no witness fees except where called by the opposite party.	

Crier's fees.

For every default on non-suit,	0 07
“ calling jury in each cause,	0 10
“ every verdict,	0 07
“ swearing every witness,	0 05
“ discharging a party by proclamation,	0 10
On every bill of costs taxed in the country,	0 10
“ “ “ Halifax,	0 20

Constable's fees in supreme court.

Attending jury in each cause,	0 20
Serving every warrant or summons,	0 20
Summoning a jury by warrant from coroner, and attendance per day,	0 50
Travel per mile the same as sheriff.	

Coroner's fees.

For every inquisition, including \$2.40 for fees of jury and 50 cents for fee of constable, to be paid by the province,	10 00
Any extraordinary and necessary expense attending the inquest or burial of a deceased person, if approved of by the grand jury and court of sessions, to be a county charge.	
The same fees as a sheriff in cases where he discharges the duty of a sheriff.	

Arbitrator's fees under a rule of court.

Reasonable fees to be taxed.

Medical practitioner's fees.

For attendance and evidence before coroner,	5 00
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Added to.

* ATTORNEY'S FEES.

*see act of 1865.
Cap. 1. Sec. 16.*

CHAP. 155.

In sub-summary causes.

Attorney,	2 00
Subpœna and ticket, each,	0 20
Execution,	0 50

\$ 2.75
2.50
10
10

In summary and appeal causes.

For writ, præcipe, affidavit and declaration,	2 50
All other proceedings, until final judgment,	3 25
Subpœna,	0 40
Tickets,	0 50
Executions,	1 20
Brief and copy when tried by a jury, not less than \$1 50, nor more than \$12 00.	

In all other causes.

Retaining fee,	2 00
One letter,	1 00
Warrant of attorney,	0 30
Præcipe,	0 30
Every writ, summons, or other original process,	1 00
Copy,	0 50
If containing declaration, additional,	1 00
Copy of same,	0 50
Particulars of demand, per folio,	0 20
Copies, per folio,	0 10
Term fee,	1 00
Notice of trial, notice to produce, and other necessary notices, in a cause,	0 75
Copies each,	0 25
Capias,	1 00
Copy,	0 50
Affidavit to hold to bail,	0 50
Entering appearance,	0 50
Brief and copies, not less than \$1 50, nor more than \$20 00, to be taxed by the court,	
Every continuance,	0 20
Every discontinuance or retraxit,	0 20
Attending, balloting, or striking special jury,	2 00
Attending taking every inquisition before sheriff,	2 00
Making bill of costs,	0 50
Attending to get same taxed,	0 50
Arguing a demurrer, special verdict, motion for new trial, or other special motion,	2 00
Trial fees,	4 00
All rules and copies, each,	0 20
Every subpœna,	0 40
Every ticket,	0 50
Travel per mile for service, the same as to sheriff.	
Attending the examination of every witness taken before a judge or commissioner,	2 50

For service of order for examining witnesses before summary.
For a hearing on appeal to be admitted to summary Equity &c.
For copying such as were per folio.
For copying the same.

* For attending Registrar of Deeds in certain cases.
The examination of witnesses when witnesses are examined in certain cases per folio.
For procuring attendance of witnesses &c.

CHAP. 155.	Every necessary attendance before a judge,	\$1 50
	Every execution, habeas corpus, writ of error and writ of inquiry or revivor, each,	1 20
	Drafting issue, per folio,	0 10
	Engrossing same, per folio,	0 10
	Drafting record, per folio,	0 10
	Engrossing same, per folio,	0 10
	All other drafting necessary to be done by an attorney in the conducting of a cause, per folio,	0 20
	All necessary engrossing, per folio,	0 10
	All necessary postages.	
	All fees paid registrars of deeds for certified copies of papers necessary for the trial.	
	Amount paid for plans or copies of plans to be used on trial or argument in the discretion of the judge.	

COUNSEL FEES.

In summary, sub-summary, or appeal causes, when tried before a jury, to be taxed by the court, not to exceed fourteen dollars.

In all other causes after appearance and plea, in arguments for new trials and in special cases submitted, and in bills taxed between attorney and client, to be taxed at the discretion of the judge, not to exceed twenty dollars, but not to be allowed in cases of default nor unless there shall have been a plea pleaded.

FEES IN EQUITABLE SUITS.

The same fees as now allowed in the supreme court, with the following additions :

Attorney's fees.

Where the writ exceeds five folios the court or a judge may allow for the excess, being not more in any case than twenty folios in all, for each folio,	\$0 20
Counsel fee for examining each equitable pleading,	2 50
Counsel fee in all equitable suits to be taxed in any stage of the cause, at the discretion of the judge, but not to exceed	20 00
Drawing every brief deemed by the judge necessary in an equitable suit, from \$4 to \$20, at his discretion.	
Every deed in foreclosure, and other equitable suit,	5 00
Every attendance before a master, shewn to have been necessary by affidavit, and approved of by the judge,	1 50
All necessary expenses incurred in serving defendants out of the province, in advertising, and for postages.	

*Master's fees.*CHAP. 155.

Every attendance on a reference, shewn to have been necessary by affidavit, and approved of by the judge,	\$1 50
Every report,	1 50
And for every folio beyond six folios, but not to exceed twenty folios in all,	0 20
Administering every oath and signing jurat,	0 40
All necessary travel, going and returning, per mile,	0 05
On sales of land in foreclosure and other equitable suits:—For sheriff or master attending the sale and receiving and paying over the amount, in lieu of all poundage,	10 00

COURT OF MARRIAGE AND DIVORCE.

For the governor, vice president and judges, for each day they shall actually attend, each	4 00
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Advocate and proctor's fees.

Retaining fee for counsel,	5 00
Proxy,	1 50
Draft of libel or other pleading, per folio,	0 20
Engrossing same, per folio,	0 10
Entering appearance,	0 75
Every subpœna, citation or other writ,	1 00
Copies for service, each,	0 30
Drawing affidavit of service of subpœna, citation, or other process or proceeding,	0 40
Every petition necessary in conducting a cause,	0 75
Every order,	0 75
Counsel fee on making or defending every special motion, not to exceed	5 00
Drawing brief in every cause, per folio,	0 20
Counsel fee for examining and signing each pleading,	2 33
Draft of interrogatories, per folio,	0 20
Engrossing ditto,	0 10
Counsel fee on hearing or argument, not to exceed	14 00
Making up bill of costs,	0 75
Serving every subpœna, or other writ or order,	0 70
Travel per mile from the residence of the party making service to the place of service,	0 05
Every necessary attendance on the registrar,	1 50
Draft of decree, per folio,	0 10
Engrossing ditto,	0 10

Registrar's fees.

Entering and filing every bill,	0 50
Entering and filing every other pleading,	0 30

CHAP. 155. Filing all other papers, each,	\$0 10
Signing and sealing every writ, and certifying copies,	0 50
Every search,	0 20
Copies of all papers, per folio,	0 10
Drawing and signing every rule or order,	0 20
Every necessary attendance on the vice president,	1 00
Every court day,	1 00
On procuring signature of final decree,	1 50

Commissioners on examination of witnesses.

For taking the examination of every witness, each commissioner per day,	5 00
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PROBATE COURT.

Judge's fees.

Where the estate does not exceed \$400 and there is no contest, in full of all fees,	4 00
Where the estate does not exceed \$800 and there is no contest, in full of all fees,	6 00
Every citation, including order for the same,	0 40
Every order not herein specially provided for,	0 40
For the probate of a will or letters of administration where the estate does not exceed \$800, and order for the same,	3 50
Ditto, ditto, when above \$800 and not exceeding \$4000, and order,	4 00
Ditto, ditto, when above \$4000, and order,	9 50
For warrant of appraisement and order for the same,	0 50
For every subpœna, attachment, execution, or other process not otherwise provided for, including order for the same,	0 20
Letters <i>ad colligendum</i> ,	2 00
Sentence or decree in ordinary cases of granting licenses to sell, mortgage or lease real estate, passing accounts of distribution, &c.,	2 00
Sentence or decree for probate of a will or codicil, letters of administration, or granting license to sell, mortgage or lease real estate, passing accounts of distribution, &c., where there is a contest,	6 00
Transmitting appeal with statement of decision,	5 00
Taking testimony in writing where there is a contest, per folio,	0 20
Warrant for appraisers to divide real estate, on petition of parties,	1 00
<i>Dedimus potestatem</i> to take deposition of witnesses and order therefor,	1 00
Appointing and allowing guardians to minors, and order therefor,	3 00

Every oath administered by him,	\$0 20	CHAP. 155.
Examining and taxing costs,	0 50	

Registrar's fees.

Where the estate does not exceed \$400 and there is no contest, in full of all fees,	4 00
Where the estate does not exceed \$800 and there is no contest, in full of all fees,	6 00
For filing every paper,	0 07
Probate of will and letters of administration and entry or order therefor, where the estate is under \$800,	3 50
Where estate is above \$800 and does not exceed \$4000, and entry of order,	4 00
Where estate is above \$4000, and entry of order therefor,	9 50
Letters of guardianship or <i>ad colligendum</i> , and entry of order,	2 00
Copy of will and probate, per folio,	0 10
For preparing bond in all necessary cases,	0 80
Preparing citation and seal,	0 40
Each copy thereof,	0 20
Preparing necessary affidavits, each,	0 20
Filing every warrant and seal,	0 50
“ every certificate of license to sell real estate,	1 00
For all copies of papers, per folio,	0 10
For every certificate and <i>dedimus potestatem</i> ,	1 00
For entry of every decree in registry book, and of every order not specially provided for, per folio,	0 10
Every search or inspection of documents,	0 20
Preparing subpœna and seal,	0 40
Filing each ticket for the same,	0 10
Filing every caveat or appeal,	0 40
Preparing every execution, attachment, or other process not specially provided for, and entry of order therefor,	0 40
Filing every decree,	2 00
Every oath administered by him,	0 20
Taxing costs,	0 50

Proctor and advocate's fees.

Taking instructions for client to commence or defend proceedings in probate court,	2 00
Preparing every petition,	1 00
Preparing every allegation or other paper necessary to be prepared by him, including accounts, per folio,	0 20
Every additional copy thereof, per folio,	0 10
Every necessary attendance on judge,	1 50
Every hearing or argument before the judge, not less than two dollars and fifty cents nor more than ten dollars, at the discretion of the judge.	

CHAP. 155. Serving every notice or other paper, on each person. \$0 20*Sheriff or other ministerial officer's fees.*

Serving citation or other process, (subpœna excepted) on each person,	0 50
Posting up same in three public places directed by the judge,	1 00
Serving subpœna on each person,	0 20
Travelling fees same as in supreme court.	

Appraiser's fees.

For appraising the estate of a deceased person not to exceed, for each day he shall be actually employed.	2 00
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MAGISTRATE'S COURT.

Justice's fees.

Each summons or capias and copy thereof,	0 40
Affidavit for a capias and swearing,	0 10
Subpœna and tickets,	0 20
Trials and judgment in all causes,	0 20
<i>Venire</i> ,	0 20
Returning papers on appeal to supreme court,	0 20
Each execution,	0 20
Affidavit of service of summons when required and swearing,	0 10
Affidavit on appeal and swearing,	0 10
Appeal bond,	0 50

All fees taken in any suit wherein the services and presence of two justices are required as well as for the execution therein, except for returning the papers on appeal, to be divided between the two justices acting therein as follows, two-thirds to the justice first applied to, and the remaining third to the other.

Constable's fees.

Serving summons and making return,	0 20
Serving capias and making return,	0 20
Bail bond,	0 20
Summoning a jury,	0 20
Summoning each additional juror where there are not sufficient by-standers,	0 05
Serving subpœna, each witness,	0 10
Serving execution,	0 20
Poundage on execution on sale of goods,	0 10
Poundage on execution where the amount is paid in money, for each pound,	0 05

All travelling to be computed from residence of justice to residence of defendant, on summons, capias or execution; and from residence of officer to residence of witness, on subpœna, each mile when necessarily done,	\$0 05
In cases of execution levied on the body, travelling to be computed from residence of officer to that of defendant and thence to place of confinement, each mile,	0 05
Where subpœnas are served by a constable, travel shall not be charged for serving each witness, but only so much travel as may be actually and necessarily performed by the constable in serving all the subpœnas.	

Witness' fees.

Each day in actual attendance,	0 50
All travelling, to to be computed from the residence of the witness to the place of trial, per mile,	0 08
NOTE.—If the witness at the time of being served with the subpœna <u>demand</u> s his fees, he shall not be bound to attend unless fees equal to one day's attendance and his travel as above, be tendered to him at the time, or at such other reasonable time before the day of trial, as to admit of his attendance with certainty.	

Juror's fees.

Each juror on every trial,	0 20
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Fees of jailer or keeper of lock-up house.

For every person committed to jail on civil process,	0 50
For every person discharged therefrom, except insolvents and criminals,	0 50

BASTARDY CASES.

Justice's fees.

The examination of the woman in writing,	0 20
Warrant to apprehend the reputed father before birth of the child,	0 40
Bond to indemnify the township or district,	0 60
Warrant to bring the reputed father and mother before the justices,	0 60
All commitments, each,	0 20
Bond to perform order of filiation, whether on appeal or otherwise,	0 60
Warrant to apprehend the reputed father when he shall not have appeared at the time of making order of filiation,	0 40
Order of filiation, per folio,	0 10

CHAP. 155.*Constable's fees.*

The same as in other cases before justices.

REGISTRAR'S OF DEEDS FEES.

For the attestation of a subscribing witness,	\$0 20
For entering and registering every deed or conveyance, every 90 words,	0 10
For entering every docket of judgment or attachment,	0 50
For registering appraisement, per folio,	0 10
For entering and filing a discharge of judgment or attachment,	0 20
For every certificate of registry written on any deed or conveyance, (not to be charged in case of judgment or attachment, or discharge thereof, or of the release of a mortgage),	0 20
For every office copy from the books of registry delivered out, 100 words,	0 10
For every certificate upon such office copy where such shall be required,	0 20
For every search, whether for a single deed or conveyance, or for a single title, made on one and the same day,	0 20
For filing, indexing, and entering every bill of sale or copy,	0 20
For administering every oath thereon,	0 20
For entering and indexing every certificate of discharge,	0 20
For inspection of bill of sale,	0 20

FEES ON DISTRESS FOR RENT.

Warrant to bailiff,	0 50
Appraisement,	0 20
Notice and each necessary copy,	0 10
Appraisers, each,	0 25
On a sale, the same fees as to a sheriff.	
No custody money to be allowed.	

CROWN LAND OFFICE FEES.

For every search,	0 30
Copy of any grant,	0 50
For every copy of, or portion of, or an entire general plan of a county, such reasonable sum as the commissioner may approve.	
Copies of other documents, per folio,	0 10

Above fees not to apply to applicants for grants, or to information in connection with such applications; and all such fees shall be paid into the office of the receiver general and accounted for in the annual account of commissioner of crown lands.

PART IV.

OF THE CRIMINAL LAW AND THE ADMINISTRATION OF CRIMINAL JUSTICE.

TITLE XLI.

OF OFFENCES AGAINST THE GOVERNMENT.

CHAPTER 156.

OF TREASON.

1. Whoever shall compass or imagine the death of the queen, or of her eldest son or heir; or who shall levy war against her, or adhere to her enemies, giving to them aid or comfort, and shall thereof be duly convicted, shall be declared and adjudged to be a traitor, and shall suffer death and forfeiture as in cases of high treason.

Treason defined; punishment.

2. All acts of the imperial parliament directing the proceedings and evidence on trials for high treason in England, shall have their full force and effect and be observed as the rule on trials for high treason in this province.

Proceedings and evidence to be as in England.

CHAPTER 157.

OF OFFENCES RELATING TO THE ARMY AND NAVY.

1. Whosoever shall procure or solicit any soldier, seaman, or marine, to desert her majesty's service, or shall assist any deserter from her majesty's service in deserting, or concealing himself from such service, knowing him to be a deserter, shall forfeit not less than eighty dollars, nor more than two hundred dollars; and in default of payment shall be committed to jail for a term not exceeding twelve months.

Penalty for assisting deserters, or procuring desertion.

2. Whosoever shall buy, exchange, or detain, or otherwise receive from any soldier or deserter, any arms, clothing, or furniture, belonging to her majesty, or any such articles belonging to any soldier or deserter, as are gene-

Penalty for receiving regimental necessaries, &c.

CHAP. 157. rally deemed regimental necessities, according to the custom of the army, or shall cause the colour of such clothing or articles to be changed, or shall exchange, buy, or receive from any soldier, any provisions without leave in writing, from the officer commanding the regiment or detachment to which such soldier shall belong, shall forfeit not less than twenty dollars nor more than forty dollars, and in default of payment shall be committed to jail for a term not exceeding nine months.

Penalty for receiving necessities from marines or seamen.

3. Whosoever shall buy, exchange, or detain, or otherwise receive from any seaman or marine, upon any account whatever, or shall have in his possession any arms or clothing, or any such articles belonging to any seaman, marine or deserter, as are generally deemed necessities, according to the custom of the navy, shall forfeit not less than sixty dollars nor more than one hundred and twenty dollars, and in default of payment shall be committed to jail for a term not exceeding nine months.

Recovery of penalties.

In city of Halifax.

4. All forfeitures incurred under the preceding sections may be recovered, without any reference to the amount of such forfeitures, by summary process before any two justices of the peace; except in the city of Halifax, where the same may be recovered before the mayor and one alderman, or the recorder and one alderman; and one half of such forfeitures shall in each case be paid to the party on whose information or through whose means the person accused shall have been convicted.

Appeal.

5. An appeal from the decision of such justices or city authorities to the supreme court shall be allowed, on a bond to respond the judgment on such appeal being entered into by the appellant, with two sufficient securities in double the amount of the forfeiture appealed against; and in case of such prosecutions or of such appeals the examination of any soldier, seaman, or marine, liable to be ordered from the province, or of any witness, sick, infirm, or about to leave the province, may be taken *de bene esse* before any commissioner, in like manner as depositions in civil cases are now taken.

Examination of witnesses about to leave province.

Apprehension of suspected deserters.

6. Any person reasonably suspected of being a deserter from her majesty's service, may be apprehended and brought for examination before any justice of the peace; and if it shall appear that he is a deserter, he shall be confined in jail until claimed by the military or naval authorities, or proceeded against according to law.

Warrant required to enter a building in search of deserters.

Penalty for resisting warrant.

7. No person shall break open any building to search for a deserter, unless he shall have obtained a warrant for that purpose from a justice of the peace, such warrant to be founded on affidavit that there is reason to believe that the deserter is concealed in such building, and that admittance has been demanded and refused; and any person resisting the execution of any such warrant shall forfeit eighty dollars.

8. Any justice of the peace, upon information on oath, may issue a warrant against persons charged with any of the offences mentioned in this chapter as in the case of other criminal offences.

CHAP. 158.

Justices of the peace may issue warrants.

CHAPTER 158.

OF ILLEGAL ENLISTMENT.

1. If any person whatever shall hire, retain, engage or procure, or shall attempt or endeavour to hire, retain, engage or procure, or shall solicit or persuade any person or persons whatever in this province to enlist, or to enter himself to serve, or engage to enlist or to serve, or to be employed in any rank, office, or capacity whatever, and either by land or sea, in the service, or employment of, or for or under or in aid of any foreign prince, state, potentate, government, colony, province, or any part of any province or people, or of, or for, or under, or in aid of any persons exercising or assuming to exercise any powers of government in or over any foreign country, colony, province, or part of any province or people; or to go, or agree to go, or embark from any part of this province for the purpose or with intent to be so enlisted, entered, engaged or employed, as aforesaid, whether any enlisting money, pay or reward, shall have been or shall be actually given or received or not, in any or either of such cases, every person so offending shall be deemed guilty of a misdemeanor; and upon being convicted thereof upon any information or indictment, shall be punishable at the discretion of the court by fine and imprisonment, or either of them; and by imprisonment either in the county jail or provincial penitentiary.

Persons procuring illegal enlistment to be guilty of a misdemeanor.

Punishment upon conviction.

2. If any person whatever shall, on any pretext whatever, hire, retain, engage, entice or procure, or shall attempt or endeavour to hire, retain, engage, entice, or procure, or shall solicit or use means to induce any of her majesty's subjects in this province to go, or to agree to go, from any part of this province by land or by water, to any foreign state or country, or to any place out of this province; such person in so doing having the purpose and intention of procuring, facilitating, or bringing about the enlistment or employment, or the engagement to enlist or to be employed of any such subject of her majesty, in any rank, office, or capacity, by land or sea, in the service, or employment of, or for, or under, or in aid of any foreign prince, state, potentate, government, colony, province, or any part of

Enticing persons abroad for purpose of enlistment.

CHAP. 158. any province or people; or of, or for, or under, or in aid of any person or persons exercising or assuming to exercise any powers of government in or over any foreign country, colony, province or people, whether such subject of her majesty shall know of such purpose or intention or not, or whether such subject shall actually leave this province or not, or whether such subject shall enlist or engage in any such service or employment or not; every person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof upon any information or indictment, shall be punishable at the discretion of the court by fine and imprisonment, or either of them, and either by imprisonment in the county jail or provincial penitentiary.

A misdemeanor.

Punishment.

Enticing minors and apprentices to leave the province, &c.

3. If any person whatever shall, for any object whatever, hire, retain, engage, procure, or entice, or shall attempt or endeavor to hire, retain, engage, procure or entice, or shall solicit, or use any means whatever to induce, any minor, ward, or apprentice in this province, to go, or to agree to go, from any part of this province, by land or by water, to any foreign state or country, without the knowledge, consent, or approval, or against the will, of the parent, guardian, or master, or such person as shall have the charge and authority over, or be entitled to the services of, such minor, ward, or apprentice, such person so offending shall be deemed guilty of a misdemeanor, and upon being convicted thereof, upon any information or indictment, shall be punishable, at the discretion of the court, by fine and imprisonment, or either of them, and either by imprisonment in the county jail or provincial penitentiary.

A misdemeanor.

Punishment.

Justices may issue warrants, &c.

4. Any justice of the peace may, on complaint on oath, issue his warrant against any person charged with any misdemeanor under this chapter, and cause him to be arrested and brought before himself or any other justice of the peace, and held to bail with sufficient sureties to appear before the supreme court to answer such complaint.

This chapter not to prevent action for damages.

5. This chapter shall not be construed to prevent any person aggrieved by anything done in violation of the provisions of this chapter from bringing an action for damages therefor, and in any such action a judge may, in his discretion, on sufficient evidence on affidavit, allow a *capias*, although it may not appear that the defendant is about to leave the province.

CHAPTER 159,

OF OFFENCES AGAINST RELIGION.

1. Whosoever shall maliciously disturb any congregation of persons assembled for religious worship, or shall molest any preacher or person officiating at such congregation, or any persons there assembled, upon conviction before a justice of the peace, shall forfeit not less than five nor more than forty dollars, and in default of payment shall be committed to jail for a term not less than twenty-four hours nor more than ten days.

Penalty for disturbing persons assembled for public worship.

2. Any person who shall be convicted before a justice of the peace of shooting, gambling or sporting, of frequenting tippling houses, or of servile labor, works of necessity and mercy excepted, on the Lord's day, shall for every offence forfeit not less than one nor more than eight dollars, and in default of payment shall be committed to jail for a term not less than twelve hours nor more than four days.

Fine for desecration of the Lord's day.

3. If any person shall, by riotous or disorderly conduct or language, or by discharging firearms, or by fire works, or by cries or other noises, wantonly or maliciously disturb the peace and quiet of any assemblage of persons lawfully convened for any religious, moral, social, or benevolent purpose, he shall for every offence forfeit a sum not less than two dollars nor more than eight dollars.

Disturbing religious, and other meetings or congregations.

4. If any person shall wilfully or wantonly untie, remove, or let loose, disfigure or injure any horse, or remove or meddle with, injure or destroy any vehicle, or cut, injure or destroy any harness connected with such horse or vehicle, while the same are in the vicinity of any place where such meeting may be in the act of being held, he shall for every offence forfeit a sum not less than five dollars nor more than forty dollars.

Loosing or injuring horses, &c., in vicinity of such meetings.

5. Any person offending against the provisions of the third and fourth sections of this chapter, may be arrested on view by any peace officer present at such meeting, or by any other person thereto verbally authorized by any justice of the peace present thereat; and such offender shall thereupon be committed to the county jail until he shall find security to the satisfaction of a justice for his good behaviour, and to pay any fine or penalty that may be imposed upon him on any prosecution for such offence.

Arrest and punishment of offenders.

CHAP. 160.

CHAPTER 160.

OF OFFENCES AGAINST PUBLIC MORALS.

Fine for drunkenness.

1. Any person who shall be convicted of drunkenness either on view or upon oath before a justice of the peace, shall, for every offence, forfeit not less than one nor more than four dollars, and in default of payment shall be committed to jail for a term not less than twelve hours nor more than four days.

Punishment for incest.

2. Any person who shall be convicted of incest shall be guilty of a misdemeanor, and shall be imprisoned for a term not exceeding two years.

Punishment for keeping a gambling, bawdy, or disorderly house.

3. Any person who shall be convicted of keeping a common gambling house, bawdy house or other disorderly house, room or place, shall be imprisoned for a term not exceeding two years.

Who may be deemed keeper of such house.

4. Any person who shall appear or act as master or mistress, or as having the care or management of any gambling house, bawdy house or other disorderly house, shall be deemed to be the keeper thereof, and shall be prosecuted and punished as such, notwithstanding he or she shall not in fact be the real owner or keeper thereof.

Trial and punishment of offenders.

5. Any person who shall keep a common gambling house, or disorderly house, shop, room, or place, may be summarily tried and convicted before two justices of the peace, or, if in the city of Halifax, before the police court; and, on conviction, shall be punished by a fine, not to exceed twenty dollars, or by imprisonment in jail or bridewell, with or without hard labour, for a term not exceeding one month, or be both fined and imprisoned as the said justices or police court may direct.

Any justice, &c. may enter gambling houses, &c.

6. Any justice of the peace, or, if in the city of Halifax, the mayor or any alderman, may, at any time of the night or day, enter any house, shop, room, or place, suspected of being a gambling or bawdy house, shop, room, or place, and it shall be their duty, upon reasonable suspicion, or on evidence tendered them under oath, so to do.

Fine for profane swearing.

7. Any person profanely cursing or swearing in the hearing of a justice of the peace, or who shall be convicted thereof, shall forfeit forty cents for the first offence, and for a second offence double, and for a third offence treble that sum, and in default of payment shall be committed to jail for a term not less than two nor more than twelve hours.

Fine for getting up or participating in lotteries or raffles.

8. Whoever shall undertake or set up, or shall by writing or printing, publish the undertaking or setting up, of any lottery or raffle for money or goods, with intent to have such lottery or raffle drawn or thrown, or to induce

persons to purchase tickets or to give money or other valu- СНАР. 161.
ables for any such lottery or raffle, or shall play, throw or
draw at such lottery or raffle, or shall purchase any lot or
ticket for any such lottery, or shall take part in any such
raffle, shall forfeit a sum not exceeding forty dollars, and
in default of payment shall be committed to jail for a
period not exceeding thirty days.

CHAPTER 161.

OF OFFENCES AGAINST THE LAW OF MARRIAGE.

1. Whosoever being married, shall marry any other
person during the life of the former husband or wife,
whether the second marriage shall have taken place in
the province or elsewhere, shall be guilty of felony, and
shall be imprisoned for a term not exceeding two years,
and fined at the discretion of the court. Punishment for
bigamy, &c.

2. Provided that nothing in the last preceding section
shall extend to any second marriage contracted out of this
province by any other than a subject of her majesty, or to
any person marrying a second time whose husband or wife
shall have been continually absent from such person for
the space of seven years then last past, and shall not have
been known by such person to be living within that time,
or shall extend to any person who at the time of such
second marriage, shall have been divorced from the bond
of the first marriage, or to any person whose former mar-
riage shall have been declared void by the sentence of any
court of competent jurisdiction. Cases excepted
from the opera-
tion of previous
section.

3. Whosoever not being thereto duly authorized shall
presume to solemnize or celebrate marriage, or shall offici-
ate or assist in solemnizing or celebrating any marriage,
shall, for every such offence, forfeit, to the use of her ma-
jesty, a sum not exceeding four hundred dollars, nor less
than one hundred dollars, and suffer twelve months impri-
sonment notwithstanding such marriage shall be invalid
by law. Penalty and
punishment for
illegally officia-
ting at the so-
lemnization of
matrimony.

CHAP. 162.

CHAPTER 162.

OF OFFENCES AGAINST THE PUBLIC PEACE.

Punishment for twelve or more persons remaining riotously assembled after proclamation.

1. If any persons to the number of twelve or more, being unlawfully assembled together to the disturbance of the public peace, and being required by the sheriff, or a justice of the peace of the county, or of any city where such assembly shall be, by proclamation, to be made in the form hereinafter directed, to disperse themselves, shall to the number of twelve or more, unlawfully, riotously, and tumultuously continue together for the space of one hour after such proclamation made, such offenders shall be imprisoned for any term not exceeding four years.

Form of proclamation.

2. The order and form of such proclamation shall be as follows, that is to say, the person authorized to make such proclamation shall, among the rioters, or as near as he can safely come, with a loud voice command silence, and make proclamation in the words following, or to the like effect: —“ Our sovereign lady the queen charges and commands all persons being here assembled immediately to disperse themselves, and peacefully depart to their habitations or to their lawful business, or they will incur the penalty of the law against unlawful assemblies. God save the queen.”

Punishment for opposing a party making proclamation.

3. Whosoever shall forcibly oppose, or in any manner obstruct, any person lawfully making or endeavoring to make such proclamation, shall be imprisoned for a term not exceeding two years.

Punishment for remaining assembled where proclamation is obstructed.

4. If any persons to the number of twelve or more, being unlawfully assembled together, to whom proclamation should or ought to have been made if the same had not been obstructed, shall, knowing of such obstruction, continue together and not disperse themselves within one hour after such obstruction made, such offenders shall be imprisoned for a term not exceeding two years.

Punishment where three or more persons unlawfully assemble or continue assembled.

5. If three or more persons shall assemble, or having assembled shall continue together, with intent without lawful authority to execute any common purpose with force and violence, or in so violent and tumultuous a manner, or under such circumstances as are calculated to create terror and alarm amongst her majesty's subjects, such persons shall be imprisoned for a term not exceeding two years.

Punishment for unlawful assemblages damaging churches or machinery.

6. If any persons unlawfully assembled together to the disturbance of the public peace, shall damage or destroy any church, chapel, or meeting house for the exercise of religious worship, or any building or erection, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, such offenders shall be imprisoned for any term not exceeding two years.

7. If two or more persons shall fight together in a public place, in such a manner and under such circumstances as are calculated to create terror and alarm amongst her majesty's subjects, such persons shall be committed to jail for a term not exceeding three months.

CHAP. 163.

Punishment for public fighting.

8. If two or more persons shall openly carry dangerous and unusual weapons in any public place, in such a manner and under such circumstances as are calculated to create terror and alarm amongst her majesty's subjects, such persons shall be committed to jail for a term not exceeding twelve months.

Punishment for carrying dangerous weapons

9. If any person shall, by discharging fire-arms, or by riotous or disorderly conduct in any street or highway, wantonly or maliciously disturb the peace and quiet of the inmates of any dwelling house near such street or highway, he shall, for every offence, forfeit a sum not less than two dollars nor more than eight dollars.

Riotous or disorderly conduct in streets or highways.

CHAPTER 163.

OF OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE.

1. Whosoever shall assault a peace or revenue officer, or constable, in the execution of his duty, either in civil or criminal cases, or any person acting in aid of such officer, shall be committed to jail for a term not exceeding two years, and fined at the discretion of the court.

Punishment for assaulting a peace or revenue officer.

2. Whosoever shall assault any person with intent to resist the lawful apprehension or detainer of the party so assaulting, or of any other person for any offence for which he may be liable to be apprehended or detained, shall be committed to jail for a term not exceeding two years, and fined at the discretion of the court.

Punishment for aiding to resist the apprehension of the person so assaulting.

3. Whosoever shall maliciously shoot at any person, or shall attempt to discharge any kind of loaded arms at any person, or shall maliciously stab, cut or wound any person, with intent to resist the lawful apprehension or detainer of a party accused of any offence for which he may be liable to be apprehended, he shall be imprisoned for a term not exceeding seven years.

Punishment for shooting at or stabbing, &c., to resist the apprehension of a party accused.

4. Whosoever shall be convicted of perjury or subornation of perjury, shall be imprisoned for a term not exceeding seven years.

Punishment for perjury or subordination of perjury.

5. Whosoever shall be convicted of any rescue or breach of prison, shall be imprisoned for a term not exceeding two years.

Punishment for rescue or breach of prison.

CHAP. 164.

Punishment for false orders, certificates, &c., of public records.

Punishment for stealing or injuring documents connected with the administration of justice.

Punishment for corruptly taking rewards for helping persons to stolen chattels, securities, &c.

6. Whosoever having the custody of any public records, shall certify an order as true, knowing the same to be false, or make any false copy or certificate of any indictment or conviction, or shall utter any such copy or certificate with a false or forged signature thereto, or make any false certificate of registry, knowing the same to be false or forged, shall be imprisoned for a term not exceeding three years.

7. Whosoever shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall maliciously obliterate, injure or destroy, any document connected with the administration of justice, shall be imprisoned for a term not exceeding two years and fined at the discretion of the court.

8. Whosoever shall corruptly take any money or other reward under pretence of helping any person to any chattel, valuable security or moveable thing, which shall have been stolen, taken, detained or converted, shall, unless the person so taking such money or reward shall cause the offender to be apprehended and brought to trial for the same, be guilty of felony, and shall be imprisoned for a term not exceeding seven years.

CHAPTER 164.

OF OFFENCES AGAINST THE PERSON.

Punishment for murder, &c., being accessories.

Petit treason to be deemed and punished as murder.

Punishment for manslaughter.

Killing by misfortune or in self-defence, &c. not punishable.

1. Every person convicted of murder, or of being an accessory before the fact to murder, shall suffer death as a felon; and every accessory after the fact to murder shall be imprisoned for a term not exceeding fourteen years, and fined at the discretion of the court.

2. Every offence which before the year one thousand eight hundred and forty-one would have amounted to petit treason, shall be deemed to be murder only; and all persons guilty in respect thereof, whether as principals or accessories, shall be punished as principals and accessories to murder.

3. Any person convicted of manslaughter shall be committed to jail or imprisoned in the penitentiary, as the court shall direct, for a term not exceeding fourteen years, or shall be fined at the discretion of the court.

4. Provided that no punishment or forfeiture shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony.

5. Whosoever shall administer to, or cause to be taken by any person, any poison or other destructive thing, or shall cause bodily harm to any person with intent to commit murder, shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years. CHAP. 164.
Punishment for poisoning.

6. Whosoever shall by any means, other than the actually administering or causing to be taken poison or other destructive thing, attempt to commit murder, shall, although no bodily harm be caused, be guilty of felony, and be imprisoned for a term not exceeding seven years. Punishment for attempting to commit murder otherwise than by poisoning where no harm ensues.

7. Whosoever shall maliciously cut, stab, or wound, or shall maliciously maim, disfigure or disable any person, or shall maliciously cause to any person any other grievous bodily harm, shall be guilty of felony, and be imprisoned for a term not exceeding fourteen years. Punishment for causing grievous bodily harm.

8. Whosoever shall maliciously attempt to cause grievous bodily harm to any person, shall, whether any bodily harm be caused to such person or not, be imprisoned for a term not exceeding four years. Punishment for attempting to cause grievous bodily harm.

9. Whosoever shall unlawfully set fire to, cast away, or in any wise destroy any ship or vessel either with intent to murder any person or whereby the life of any person shall be put in danger, shall be guilty of felony, and be imprisoned for the term of his natural life or for any term not less than seven years. Punishment for setting fire to or casting away a vessel with intent to murder, &c.

10. Whosoever shall maliciously impede any person being on board of, or having quitted any ship or vessel which shall be in distress or wrecked, in his endeavor to save his life, shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years. Punishment for impeding escape from a wreck.

11. Every woman being with child, who, with intent to procure her own miscarriage, shall maliciously administer to herself any poison or other noxious thing, or use any instrument or other means whatever, and every person who, with intent to procure the miscarriage of any woman, shall maliciously administer to, or cause to be taken by her, any poison or other noxious thing, or shall use any instrument or other means whatsoever, shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years. Punishment for attempting to procure abortion.

12. Where a woman shall have been delivered of a child, any person who shall by any secret disposition of the dead body of such child, whether such child died before, at, or after its birth, endeavor to conceal the birth of such child, shall be imprisoned for a term not exceeding two years. Punishment for endeavoring to conceal the birth of a child.

13. Whosoever shall unlawfully and carnally know any woman against her will and by force, or whilst she is insensible, shall be guilty of rape, and shall be imprisoned for the term of his natural life, or for any term not less than seven years. Punishment for rape.

CHAP. 165. 14. Whosoever shall unlawfully and carnally know and abuse any girl under the age of ten years, shall be guilty of felony, and be imprisoned for the term of his natural life.

Punishment for abusing a female under ten years.

15. Whosoever shall unlawfully and carnally know and abuse any girl being above the age of ten years, and under the age of twelve years, shall be imprisoned for a term not exceeding seven years.

Punishment for buggery.

16. Whosoever shall commit the crime of buggery, either with mankind or with any animal, shall be guilty of felony, and be imprisoned for the term of his natural life, or for any term not less than seven years.

Carnal knowledge, what shall constitute.

17. Any the least degree of penetration, though there be no emission of seed, shall be sufficient to constitute carnal knowledge as regards the crimes mentioned in sections thirteen, fourteen, fifteen and sixteen of this chapter.

Punishment for abduction of girls under sixteen.

18. Whosoever shall unlawfully take, or cause to be taken, any unmarried girl under the age of sixteen years, out of the possession or against the will of her father or mother, or any other person having the lawful charge of her, shall suffer such punishment by fine or imprisonment, or both, as the court shall award.

Punishment for assault with intent to commit a felony.

19. Whosoever shall assault any person with intent to commit a felony, shall be imprisoned for a term not exceeding two years, and fined at the discretion of the court.

Punishment for assault on a trial for a felony.

20. Whosoever on trial for any felony whatever, and which shall include an assault, shall be convicted of assault, shall be committed to jail or imprisoned in the penitentiary as the court shall direct, for a term not exceeding five years, and shall be fined at the discretion of the court.

Punishment for assaults, &c. in pursuance of combinations to raise wages, &c.

Acts of 1864, Chapter 9.

21. Whosoever in pursuance of any combination or conspiracy to raise the rate of wages, or of any unlawful combination or conspiracy respecting any trade, business or manufacture, or respecting any person concerned or employed thereon, shall unlawfully assault any person, or who in pursuance of any such combination or conspiracy, shall use any violence or threat of violence to any person with intent to deter or hinder him from working or being employed in or about any such trade, business or manufacture, shall be guilty of a misdemeanor; and being convicted thereof, shall be liable at the discretion of the court to be imprisoned for any term not exceeding five years.

CHAPTER 165.

OF COMBINATIONS OF WORKMEN.

[PASSED ON THE 10TH DAY OF MAY, A. D., 1864.]

1. If any person shall by violence to the person or property, or by threats or intimidation, or by molesting, or in any way obstructing another, force, or endeavor to force, any journeyman, manufacturer, miner, workman, or other person, hired or employed in any manufacture, mining operations, trade, or business, to depart from his hiring, employment or work, or to return his work before the same shall be finished, or prevent, or endeavor to prevent, any journeyman, manufacturer, miner, workman, or other person, not being hired or employed, from hiring himself to, or from accepting work or employment from any person or persons; or if any person shall use or employ violence to the person or property of another, or threats or intimidation, or shall molest, or in any way obstruct another for the purpose of forcing or inducing such person to belong to any club or association, or to contribute to any common fund, or to pay any fine or penalty, or on account of his not belonging to any particular club or association, or not having contributed or having refused to contribute to any common fund, or to pay any fine or penalty, or on account of his not having complied, or of his refusing to comply, with any rules, orders, resolutions, or regulations, made to obtain an advance, or to reduce the rate of wages, or to lessen or alter the hours of working, or to decrease or alter the quantity of work, or to regulate the mode of carrying on any manufacture, mining operations, trade, or business, or the management thereof; or if any person shall, by violence, to the person or property of another, or by threats or intimidation, or by molesting, or in any way obstructing another, force, or endeavor to force, any manufacturer or person carrying on any trade, mining operations, or business, to make any alteration in his mode of regulating, managing, conducting, or carrying on such manufacture, mining operations, trade, or business, or to limit the number of his apprentices, or the number or description of his journeymen, workmen, miners, or servants; every person so offending, or aiding, abetting or assisting therein, being convicted thereof, in manner hereinafter mentioned, shall be imprisoned only, or shall and may be imprisoned and kept to hard labor, in the provincial penitentiary, for any time not exceeding twelve calendar months.

Penalty for interfering with employers and workmen with regard to the wages, work, &c.

CHAP. 165.

Persons exempted from operations of chapter.

2. This chapter shall not extend to subject any persons to punishment who shall meet together for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at such meeting, or any of them, shall require or demand for his or their work, or the hours or time for which he or they shall work in any manufacture, mining operations, trade or business, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices which the parties entering into such agreement, or any of them, shall require or demand for his or their work, or the hours or time for which he or they will work in any manufacture, mining operations, trade or business; and that persons so meeting for the purposes aforesaid, or entering into any such agreement, as aforesaid, shall not be liable to any prosecution or penalty for so doing, any law or statute to the contrary notwithstanding.

Persons exempted.

3. This chapter shall not extend to subject any persons to punishment who shall meet together for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at such meeting, or any of them, shall pay to his or their journeymen, miners, workmen, or servants, for their work, or the hours or time of working in any manufacture, mining operations, trade or business, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices, which the parties entering into such agreement, or any of them, shall pay to his or their journeymen, miners, workmen, or servants, for their work, or the hours or time of working in any manufacture, mining operations, trade, or business; and that persons so meeting for the purposes aforesaid, or entering into any such agreement as aforesaid, shall not be liable to any prosecution or penalty for so doing, any law or statute to the contrary notwithstanding.

Offenders to give evidence, &c.

4. All and every person or persons who shall, or may, offend against this chapter shall, and may, equally with all other persons be called upon, and compelled to give his or her testimony and evidence as a witness or witnesses, on behalf of her majesty, or of the prosecutor or informer upon any information to be made or exhibited under this chapter, against any other person or persons, not being such witness or witnesses as aforesaid, and that in all such cases, every person, having given his or her testimony or evidence, as aforesaid, shall be and is hereby indemnified of, from and against any information to be laid or prosecution to be commenced against him or her for having offended in the matter wherein, or relative to which, he, she or they shall have given testimony or evidence, as aforesaid.

5. On complaint and information on oath before any one or more justices of the peace, of any offence having been committed against this chapter, within his or their respective jurisdictions, and within six calendar months before such complaint or information shall be made, such justice or justices are hereby authorized and required to summon the person or persons charged with being an offender or offenders against this act, to appear before any two such justices at a certain time or place to be specified; and if any person or persons so summoned shall not appear according to such summons, then such justices, proof on oath having been first made before them of the due service of such summons upon such person or persons, by delivering the same to him or them personally, or leaving the same at his or their usual place of abode, provided the same shall be so left twenty-four hours at the least before the time which shall be appointed to attend the said justices upon such summons, shall make and issue their warrant or warrants for apprehending the person or persons so summoned and not appearing, as aforesaid, and bringing him or them before such justices; or it shall be lawful for such justices, if they shall think fit, without issuing any previous summons, and instead of issuing the same upon such complaint and information as aforesaid, to make and issue their warrant or warrants for apprehending the person or persons by such information charged to have offended against this chapter, and bringing him or them before such justices; and upon the person or persons complained against appearing upon such summons, or being brought by virtue of such warrant or warrants before such justices, or upon proof on oath of such person or persons absconding so that such warrant or warrants cannot be executed, then such justices shall, and they are hereby authorized and required forthwith, to make inquiry touching the matters complained of, and to examine into the same by the oath or oaths of any one or more credible person or persons as shall be requisite, and to hear and determine the matter of every such complaint; and upon confession by the party or proof by one or more credible witness or witnesses upon oath, to convict or acquit the party or parties against whom complaint shall have been made as aforesaid.

CHAP. 165.

Proceedings
before a justice
of the peace.

6. It shall be lawful for the justices of the peace before whom any such complaint and information shall be made as aforesaid, and they are hereby authorized and required, at the request in writing of any of the parties, to issue his or their summons to any witness or witnesses, to appear and give evidence before such justices at the time and place appointed for hearing and determining such complaint, and which time and place shall be specified in such summons; and if any person or persons so summoned to appear as a witness or witnesses as aforesaid, shall not

Witnesses; how
summoned;
penalty for non-
compliance.

CHAP. 165. appear before such justices at the time and place specified in such summons, or offer some reasonable excuse for the default, or, appearing according to such summons, shall not submit to be examined as a witness or witnesses, and give his or their evidence before such justices touching the matter of such complaint, then and in every such case it shall be lawful for such justices, and they are hereby authorized—proof on oath, in the case of any person not appearing, according to such summons, having been first made before such justice of the peace, of the due service of such summons on every such person, by delivering the same to him or her, or by leaving the same twenty-four hours before the time appointed for such person to appear before such justices, at the usual place of abode of such person—by warrant under the hands of such justices, to commit such person or persons so making default in appearing, or appearing and refusing to give evidence, to some prison within the jurisdiction of such justices, there to remain without bail for three calendar months, or until such person or person shall submit to be examined, and give evidence before such justices, as aforesaid.

Forms in annexed schedule to be used.

7. The justices before whom any person or persons shall be convicted of any offence against this chapter, or by whom any person shall be committed to prison for not appearing as a witness, or not submitting to be examined, shall cause all such convictions, and the warrants or orders for such commitments, to be drawn up in the form, or to the effect, set forth in the schedule to this chapter annexed.

Appeal; proceedings under &c.

8. If any person convicted of any offence or offences, punishable by this chapter, shall think himself or herself aggrieved by the judgment of such justices, before whom he shall have been convicted, such person shall have liberty to appeal from every such conviction to the next sittings of the supreme court, which shall be held for the county, wherein such offence was committed; and that the execution of every judgment so appealed from shall be suspended, in case the person so convicted shall immediately enter into recognizances before such justices—which they are hereby authorized and required to take—himself with two sufficient sureties, in the penal sum of two hundred dollars of lawful money of Nova Scotia, upon condition, to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the said next sittings of the supreme court, and to pay such costs as the said court shall award on such occasion; and the judge or judges in the said next sittings of the supreme court, are hereby authorized and required to hear and determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable, to be paid by either party, which decision shall be final; and if, upon hearing the said appeal, the judgment of the

justices before whom the appellant shall have been con- CHAP. 165.
victed, shall be affirmed, such appellant shall immediately
be committed by the said court to the common gaol or
provincial penitentiary, without bail, according to such
conviction, for the space of time therein mentioned.

SCHEDULE.

Form of conviction and commitment.

Be it remembered, that on the — day of —, in the
year of our Lord, one thousand eight hundred and —,
A. B. is convicted before us, [*naming the justices,*] two of
her majesty's justices of the peace for the county of —,
of having, [*stating the offence,*] contrary to chapter one hun-
dred and sixty-five of the revised statutes, third series,
"of combinations of workmen," and we, the said justices,
do hereby order and adjudge the said A. B. for the said
offence, to be committed to, and confined in the [*common
jail, for the said county of —, or provincial penitentiary at
Halifax, there to be kept to hard labor*] for the space of —.

Given under our hands the day and year above written.

Form of a commitment of a person summoned as a witness.

Whereas, C. D. hath been duly summoned to appear and
give evidence before us, [*naming the justices who issued the
summons,*] two of her majesty's justices of the peace for
the county of —, on this — day of —, at —,
being the time and place appointed for hearing and deter-
mining the complaint made by [*the informer or prosecutor*]
before us, against A. B., of having [*stating the offence as laid
in the information*] contrary to chapter one hundred and
sixty-five of the revised statutes, third series, "of combi-
nations of workmen;" and whereas, the said C. D. hath not
appeared before us at the time and place aforesaid, speci-
fied for that purpose, or offered any reasonable excuse for
his [*or her*] default, [*or, and whereas, the said C. D. having
appeared before us at the time and place aforesaid, speci-
fied for that purpose, hath not submitted to be examined
as a witness and give his [or her] evidence before us, touch-
ing the matter of the said complaint, but hath refused so
to do,*] therefore, we the said justices, do hereby, in pur-
suance of the said statute, commit the said C. D. to the
[*describing the prison,*] there to remain without bail for his
[*or her*] contempt, aforesaid, for — calender months, or
until he [*or she*] shall submit himself [*or herself*] to be ex-
amined, and give his [*or her*] evidence before us, touching
the matter of the said complaint, or shall otherwise be
discharged by due course of law; and you, [*the constable,
or other peace officer or officers to whom the warrant is directed*]

CHAP. 166. are hereby authorized and required to take into your custody the body of the said C. D., and him [*or her*] safely to convey to the said prison, and him [*or her*] there to deliver to the jailer or keeper thereof, who is hereby authorized and required to receive into his custody the body of the said C. D., and him [*or her*] safely to detain and keep pursuant to this commitment.

Given under our hands, this — day of —, in the year of our Lord, one thousand —.

[*This commitment to be directed to the proper peace officer, and the jailer or keeper of the prison.*]

CHAPTER 166.

OF OFFENCES AGAINST THE HABITATION.

Punishment for burglary.

1. Whosoever shall commit burglary shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

Breaking out of a house in the night, having entered with intent to commit felony, &c., to be burglary.

2. If any person shall enter the dwelling house of another with intent to commit felony, or being in such dwelling house shall commit a felony, and shall in either case break out of the house in the night time, such person shall be deemed guilty of burglary.

Same subject.

3. Provided always, that no building, although within the same curtilage with the dwelling house, and occupied therewith, shall be deemed to be part of such dwelling house for the purpose of burglary, unless there shall be a communication between such building and dwelling house, either immediately or by means of a covered and enclosed passage leading from one to the other.

Punishment for burglariously entering a house and assaulting a person with intent to commit murder.

4. Whosoever shall burglariously break and enter into any dwelling house, or any inner part thereof, and shall assault with intent to murder any person being therein, or shall cause any bodily harm, or do any personal violence to such person, shall be guilty of felony, and be imprisoned for the term of his natural life, or for any term not less than seven years.

Punishment for entering other buildings by night for the purpose of burglary.

5. If any person shall in the night time break and enter any building, being within the curtilage of a dwelling house and occupied therewith, but not being part thereof, according to the provision in the third section of this chapter, or any public office, public building, or other building, not being a dwelling house for the purpose of burglary, with intent to commit a felony, every such offender shall be guilty of felony, and shall be imprisoned for a term not exceeding seven years.

6. So far as the same is essential to the offence of burglary, the night shall be considered and is hereby declared to commence at nine o'clock of the evening of each day, and to conclude at six o'clock in the morning of the next succeeding day. CHAP. 166.

Night defined for settling questions of burglary.

7. Whosoever shall in the day time unlawfully break and enter any dwelling house, or building within the curtilage of a dwelling house, or any public office or other public building, or any building used for carrying on any business, or any stable, barn, or store house, or any church, chapel, or meeting house for the exercise of any mode or form of religious worship whatever, with intent to commit a felony shall be committed to jail or imprisoned in the penitentiary as the court may direct, for a term not exceeding five years, and shall be fined at the discretion of the court.

Penalty for unlawfully breaking and entering a dwelling house, office, church, &c., with intent to commit a felony.

8. Whosoever shall be indicted for any burglary, where the breaking and entering shall be proved at the trial to have been made in the day time, and no breaking out shall appear to have been made in the night time, or where it shall be left doubtful whether such breaking and entering or breaking out, took place in the day or night time, shall be acquitted of the felony, but may be convicted of the offence specified in section seven of this chapter.

Punishment where the burglary charged is not clearly proven, but the breaking, &c., is proven.

9. It shall not be available, by way of defence, to a person charged with the offence specified in section seven of this chapter, that the breaking and entering were such as to amount in law to burglary—provided that the offender shall not be afterwards prosecuted for burglary upon the same facts; but it shall be open to the court before whom the trial for such offence shall take place, upon the application of the officer conducting the prosecution, to allow an acquittal for the misdemeanor, on the ground that such offence, as proved, amounts to burglary; and if an acquittal takes place on such ground, and be so returned by the jury in delivering their verdict, the same shall be recorded together with their verdict, and such acquittal shall not then avail as a bar or defence upon any indictment for such burglary.

When proof of a burglary committed shall not be a defence to a charge of breaking, &c., with intent only and when offender may be again indicted for burglary.

10. Whosoever shall maliciously set fire to any dwelling house, any person being therein, shall be guilty of felony, and be imprisoned for the term of his natural life, or for any term not less than ten years.

Punishment for maliciously firing a dwelling house, a person being therein.

11. Whosoever shall maliciously, by the explosion of gunpowder or other explosive substance, destroy or damage the whole or any part of a dwelling house, any person being therein, shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

Punishment for damaging a dwelling house with powder, a person being therein.

CHAP. 167.

CHAPTER 167.

OF FRAUDULENT APPROPRIATIONS.

Punishment for robbing the person.

1. Whosoever shall rob any person shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

Punishment for an assault with intent to rob.

2. Whosoever shall assault any person with intent to rob, shall be guilty of felony, and shall be imprisoned for a term not exceeding three years.

Punishment for robbing the person and causing grievous bodily harm.

3. Whosoever shall rob any person, and at the time of, or immediately before, or immediately after such robbery, shall cause any grievous bodily harm to any person, shall be guilty of felony, and be imprisoned for the term of his natural life, or for any term not less than seven years.

Punishment for an assault by one or more persons and with intent to rob and causing bodily harm.

4. Whosoever shall, being armed with any offensive weapon or instrument, or shall, together with one or more person or persons, assault any person with intent to rob, and at the time of, or immediately before, or immediately after such assault, shall cause any bodily harm, or do any violence to the person of another, shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

Punishment for demanding property with menace or force, with intent to steal.

5. Whosoever shall with menaces, or by force, demand any property of any person, with intent to steal the same, shall be guilty of felony, and shall be imprisoned for a term not exceeding three years.

Punishment for stealing from or plundering a wreck.

6. Whosoever shall plunder or steal any part of a ship or vessel wrecked or cast on shore, or any goods or articles of any kind belonging to or on board of such ship or vessel, shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

Punishment for accusing or threatening to accuse, &c., a person with an abominable offence, and thereby extorting property.

7. Whosoever shall accuse or threaten to accuse any person of the crime of buggery, committed either with mankind or with any animal, or any assault with intent to commit the said abominable crime, or of any attempt to commit the same, or of using any solicitation or threat to any person whereby to induce such person to commit or permit the said abominable crime, with intent to extort, and shall thereby extort, from such person any property, shall be guilty of felony, and shall be imprisoned for a term not exceeding fourteen years.

Punishment for a theft committed by accusing or threatening to accuse a person of felony, &c.

8. Whosoever shall commit any theft, where the means by which possession is obtained of the thing stolen are either the accusing or threatening to accuse, or the knowingly sending, delivering or uttering of any letter or writing, accusing or threatening to accuse any person of treason or felony, or of any assault with intent to commit, or of any attempt to commit a rape, shall be guilty of felony,

and shall be imprisoned for a term not exceeding seven years. CHAP. 167.

9. Whosoever shall, by any of the means specified in section eight of this chapter, attempt to commit a theft, or shall knowingly send, deliver or utter any letter or writing, demanding of any person with menaces, and without any reasonable or probable cause, any thing being the subject of theft, shall be guilty of felony, and shall be imprisoned for a term not exceeding seven years.

Punishment for attempting to commit a theft by sending threatening letters, &c.

10. Every species of parting with, placing or disposing of any such letter or writing as is mentioned in the two last preceding sections, to the end that the same may be carried to or otherwise reach or come into the possession of the person for whom it is intended, shall be deemed to be a sending of such letter within the meaning of those sections.

What shall be held sending threatening letters.

11. Whosoever shall be convicted of larceny, shall be imprisoned for a term not exceeding seven years.

Punishment for larceny.

12. Whosoever shall steal, or for any fraudulent purpose destroy or conceal any testamentary instrument, shall suffer such punishment by fine or imprisonment, or both, as the court shall direct.

Punishment for destroying or concealing wills, &c.

13. Whosoever shall steal any muniment of title shall suffer such punishment by fine or imprisonment, or both, as the court shall direct.

Punishment for stealing muniments of title.

14. Whosoever shall steal any valuable security, shall be imprisoned for a term not exceeding seven years.

Punishment for stealing valuable securities.

15. Whosoever shall steal any cattle, or shall wilfully kill any cattle with intent to steal the carcase or skin or any part of the cattle so killed, shall be guilty of felony, and shall be imprisoned for a term not exceeding seven years.

Punishment for stealing or killing cattle with intent to steal, &c.

16. Nothing in the four last preceding sections contained shall in any wise affect any civil remedy of any parties.

Civil remedies not affected by the last four sections.

17. Whosoever being a clerk or servant shall steal anything belonging to or in the possession or under the power of his master, shall be guilty of felony, and shall be imprisoned for a term not exceeding seven years.

Punishment for a clerk or servant stealing from his master.

18. Whosoever with intent to defraud any person of anything which is the subject of theft, shall obtain such thing from any person by any false pretence, by which the owner or other person authorized is induced to part with the entire property in such thing, shall be imprisoned for a term not exceeding two years.

Punishment for obtaining articles by false pretences.

19. A false pretence, within the meaning of the last preceding section, is a false representation of some state of things past or present.

What shall be held "a false pretence."

20. Any fraud or ill practice in playing at any game, or in bearing a part in the stakes, or on betting or wagering

Fraud in games bets, or wagers, to be held a false pretence.

CHAP. 167. on the event, shall be deemed to be a false pretence within the meaning of section eighteen of this chapter.

When the offence proved is a larceny, in what case it shall be a defence on a charge of false pretence.

21. It shall not be available by way of defence to a person charged with the offence specified in section eighteen of this chapter, that the property in question was so obtained as to amount in law to larceny, provided that the offender shall not be afterwards prosecuted for larceny upon the same facts.

Punishment for clerk or servant embezzling his master's property.

22. Whosoever being a clerk or servant, or person employed for the purpose in the capacity of clerk or servant, shall embezzle anything being the property of his employer received or taken into possession by him by virtue of such employment, shall be deemed to have stolen the same from his employer, and shall be guilty of felony, and be imprisoned for a term not exceeding seven years.

Punishment for receiving goods knowing them to be stolen and obtained by false pretences, or embezzled.

23. Whosoever shall unlawfully receive or have in his possession any thing which shall have been stolen or obtained by any false pretence, or which shall have been embezzled, knowing the same to have been so stolen, detained or embezzled, shall, in case the stealing, obtaining, or embezzling of such things shall amount to felony, be imprisoned for a term not exceeding seven years; and in all other cases shall be imprisoned for a term not exceeding two years.

Regulations to be conformed to by all dealers.

24. Every person dealing in the purchase of old marine stores of every description, including anchors, cables, sails, junk, iron, copper, brass, lead, and other marine stores, shall conform to the following regulations :

First,—He shall not, by himself or his agent, purchase any old marine stores from any person under the age of sixteen years, under a penalty of four dollars for the first offence, and of six dollars for every subsequent offence.

Secondly,—He shall not purchase or receive into his stores, premises, or places of deposit, any old marine stores, except in the day time, between sunrise and sunset, under a penalty of five dollars for the first offence, and of seven dollars for every subsequent one.

Punishment for secreting stolen marine stores.

25. If any old marine stores which had been stolen are found secreted in the premises of any person purporting to be a dealer in such stores, such person shall be guilty of a misdemeanor, and shall be punishable therefor in manner now by law prescribed for such offence.

CHAPTER 168.

OF FORGERY, AND OFFENCES RELATING TO THE COIN.

1. Whosoever shall forge or counterfeit, or shall utter, knowing the same to be forged or counterfeit, the great seal of the united kingdom, her majesty's privy seal, and privy signet of her majesty, her majesty's royal sign manual, her majesty's great seal of the province of Nova Scotia, or the privy seal, or the seal at arms of the said province, or of the lieutenant governor thereof, shall be guilty of felony, and shall be imprisoned for a term not exceeding five years.

Punishment for forging public seals, &c.

2. Whosoever shall forge or alter, or shall offer, utter, or put off, knowing the same to be forged or altered, any writing, with intent to defraud any person, shall be guilty of felony, and be imprisoned for a term not exceeding seven years.

Punishment for forging or altering a writing.

3. The term "writing," as used in the last preceding section, shall be deemed to apply, whether the words or figures of the forged instrument, or any of them, are expressed at length or abridged, and whether they be so expressed by means of writing, printing or otherwise.

Definition of the word "writing" in last section.

4. The term person in section two of this chapter shall be deemed to include her majesty, any body corporate, company or society of persons not incorporated, or any person or number of persons who may be intended to be defrauded, whether such body corporate, company, society, person or number of persons, shall reside or carry on business in this province or elsewhere, in any place or country, whether under the dominion of her majesty or not.

Definition of the word "person" in section two.

5. Whosoever with intent to defraud any person, shall forge any muniment of title, or testamentary instrument, shall be guilty of felony, and be imprisoned for a term not exceeding seven years.

Punishment for forging a muniment of title.

6. Whosoever shall be convicted of the false making, impairing or counterfeiting of any coin, or of uttering any counterfeit coin, knowing the same to be counterfeit, shall be imprisoned for a term not exceeding four years.

Punishment for counterfeiting coin, &c.

CHAPTER 169.

OF MALICIOUS INJURIES TO PROPERTY.

1. Whosoever shall maliciously set fire to any building, to whatsoever purpose the same may be devoted, shall be guilty of felony, and be imprisoned for a term not exceeding fourteen years.

Punishment for maliciously firing a building.

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Punishment for setting fire to or casting away a vessel.

2. Whosoever shall maliciously set fire to, cast away, or in anywise damage or destroy, any ship or vessel, whether the same be completed or in an unfinished state, with intent thereby to prejudice any owner or part owner thereof, or of any goods on board thereof, or any underwriter thereon, or on the freight thereof, or upon any goods on board thereof, shall be guilty of felony, and be imprisoned for a term not exceeding fourteen years.

Punishment for exhibiting false lights.

3. Whosoever shall exhibit any false light or signal, with intent to bring any ship or vessel into danger, or shall maliciously do anything tending to the immediate loss or destruction of any ship or vessel in distress, shall be guilty of felony, and be imprisoned for a term not exceeding seven years.

Punishment for destroying any part of a vessel wrecked or in distress, or goods belonging thereto.

4. Whosoever shall maliciously destroy any part of any ship or vessel which shall be in distress or wrecked, or any goods or articles of any kind belonging thereto, shall be guilty of felony, and shall be imprisoned for a term not exceeding seven years.

Punishment for setting fire to coal mines, &c.

5. Whosoever shall maliciously set fire to any mine of coal or cannel coal, shall be guilty of felony, and be imprisoned for a term not exceeding seven years.

Punishment for setting fire to stacks, coals, or cordwood.

6. Whosoever shall maliciously set fire to any stack of grain, hay, straw, coals, charcoal, or pile of cordwood, shall be guilty of felony, and be imprisoned for a term not exceeding seven years.

Punishment for placing gunpowder near buildings, vessels, &c.

7. Whosoever shall maliciously place or throw into, upon, against or near any building or vessel, any gunpowder or other explosive substance, with intent to destroy or damage the same, or any machinery or fixtures, or chattels personal, shall, whether or not any explosion takes place, and whether or not any damage is effected, be guilty of felony, and be imprisoned for a term not exceeding three years.

Punishment for breaking down sawmills, dikes, mill dams, or bridges.

8. Whosoever shall maliciously break or cut down any sea bank or sea wall, or any dike or aboiteau, whereby any lands shall be overflowed or damaged, or shall be in danger of being so, or shall maliciously cut down, break, or otherwise destroy any mill dam, or shall maliciously pull down, or in anywise damage or destroy any public bridge, shall be guilty of felony, and be imprisoned for a term not exceeding seven years.

Punishment for damaging trees in gardens, fields or streets.

9. Whosoever shall maliciously destroy or damage any tree or plant, growing in any garden, field, or street, shall be committed to jail for a term not exceeding one year, or fined in a sum not exceeding forty dollars.

Punishment for cutting and carrying away corn, robbing gardens, &c., breaking down hedges, or removing vehicles, &c.

10. Whosoever shall unlawfully cut and take away any corn, or grain of any kind whatsoever growing, or shall rob any orchard, garden, or other plantation, of any fruit, vegetables, or other things therein growing, or wilfully break down, cut, or remove any part of any hedge, fence

or other enclosure, or shall remove from the premises, or CHAP. 169.
injure any vehicle, sleigh or article belonging to any
person, and on his premises, shall be committed to jail for
a term not exceeding six months, or fined in a sum not
exceeding twenty dollars.

11. Whosoever shall maliciously destroy or damage any
glass or wood work, or any metal, or any utensil or fixture,
whether made of metal or other material fixed in any
square, street, or other place dedicated to public use or
ornament, shall be committed to jail for a term not exceed-
ing one year, or fined in a sum not exceeding forty dollars.

Punishment for
damaging
glass, wood,
metal work, &c,
in any public
street or square

12. Whosoever shall maliciously kill any cattle, or
cause any harm to any cattle, with intent to kill such
cattle, or render the same useless to the owner, either
permanently, or for a time, shall be committed to jail for
a term not exceeding one year, or fined in a sum not
exceeding forty dollars.

Punishment for
killing or
maiming cattle.

13. Whosoever shall wantonly and cruelly beat, abuse,
or ill-treat any cattle, shall be punished by fine or impris-
onment in jail, at the discretion of the court.

Punishment for
wantonly and
cruelly beating
cattle.

14. Whosoever shall maliciously set fire to any crop of
corn, grain, or hay, whether standing or cut down, where-
soever the same may be growing, shall be imprisoned in
the penitentiary or committed to jail for a term not ex-
ceeding three years.

Punishment for
setting fire to
corn, grain, or
hay.

15. Whosoever shall maliciously destroy or damage any
thing kept for the purposes of art, science or literature, or
as an object of curiosity in any museum or other reposi-
tory, which museum or other repository is either at all
times, or from time to time, open for the admission of the
public, or of any considerable number of persons to view
the same, either by permission of the proprietor thereof, or
by payment of money before entering the same, shall be
committed to jail for a term not exceeding six months, or
fined in a sum not exceeding four hundred dollars.

Punishment for
damaging ar-
ticles in a
museum, &c.

16. Whosoever shall maliciously cause any water to be
conveyed into any mine, or into any subterraneous passage
communicating therewith, with intent thereby to destroy
or damage such mine, or to hinder or delay the working
thereof, or shall, with the like intent, maliciously pull
down, fill up or obstruct, any air way, water way, drain,
pit, level or shaft of or belonging to any mine, shall be
imprisoned for a term not exceeding two years.

Punishment for
damaging
mines.

17. The provisions contained in the last preceding sec-
tion shall not extend to any damage committed under
ground by any owner of an adjoining mine in working the
same, or by any person duly employed in such working.

Provisions of
last section
qualified.

18. Whosoever shall be convicted of any felony not
punishable with death, committed after a previous con-
viction for felony, shall on such subsequent conviction, be
imprisoned for a term not exceeding four years.

Punishment
upon a second
conviction of
felony.

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Principals in the second degree and accessories in cases of felony, how punished.

19. In the case of any felony punishable under and by virtue of this title, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is punishable; and every accessory after the fact, to any felony punishable by this title, except only a receiver of stolen property, shall be imprisoned for a term not exceeding two years.

Punishment for destroying buoys, beacons, &c.

20. Whosoever shall maliciously take away, destroy or damage any buoys, beacons, or sea marks, placed by order of the governor, or other person having authority, in any harbor, creek, or bay, shall forfeit a sum not exceeding four hundred dollars, and on failure in payment shall be committed to jail for a term not exceeding one year.

Penalty for making vessels fast to buoys, beacons, &c.

21. Whosoever shall make fast any vessel or boat to any such buoy, beacon or sea mark, shall forfeit a sum not exceeding eighty dollars, and on failure in payment shall be committed to jail for a term not exceeding six months.

Punishment for damaging real or personal property where no specific remedy provided.

22. Whosoever shall maliciously damage or destroy any real or personal property, either of a public or private nature, for which no remedy or punishment is hereinbefore provided, shall be committed to jail for a term not exceeding two years, or fined in a sum not exceeding eighty dollars.

Aiders and abettors punishable as principals.

23. Every person who shall abet or procure the commission of any offence punishable under the preceding section, shall be indicted and punished as a principal offender.

Twenty second section restricted.

24. Nothing in the twenty-second section shall extend to any case where the party trespassing acted under a fair and reasonable supposition that he had a right to do the act complained of, nor to any trespass not being wilful and malicious.

Appropriation of fines under twenty-second section.

25. All fines levied and received under the twenty-second section, shall, in case of the destruction of private property, or of injury thereto, be respectively paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence, and in such case, or where any public right or property is concerned, such fines shall be paid into the county treasury.

CHAPTER 170.

OF THE DEFINITION OF TERMS IN THIS TITLE.

Terms in this title defined.

1. The terms following, wheresoever occurring throughout this title, shall be understood as hereinafter defined, unless it be otherwise specially provided, or there be something in the subject or context repugnant thereto.

2. The term "officer" shall be deemed to signify any person invested with authority to execute and legally bound to execute any public duties. CHAP. 170.
Officer.

3. The term "woman" shall be deemed to signify any female. Woman.

4. The term "grievous bodily harm" shall be deemed to signify any bodily harm from which danger to life may reasonably be apprehended, or whereby any limb, member, organ of sense or mental faculty is permanently disabled, weakened or impaired—the mutilation of any part of the body, whereby permanent disfigurement is caused, the fracture or dislocation of any bone, or any bodily harm whereby the person to whom it is caused is, during the space of twenty days at the least, in bodily pain, diseased, or unable to follow his ordinary calling or pursuits. Grievous bodily harm.

5. The term "writing" shall be deemed to include any material on which any words or figures, at length or abridged, are written, printed or otherwise expressed, or any map or plan is described. Writing.

6. The term "testamentary instrument" shall be deemed to include any will, codicil, or other testamentary writing or appointment, as well during the life of the testator whose testamentary disposition it purports to be as after his death, whether the same shall relate to real or personal estate, or to both. Testamentary.

7. The term "moveable thing" as used in defining theft and other offences concerning property, shall be deemed to include money, valuable securities, muniments of title, written instruments of justice, testamentary instruments, and all domestic animals; also the bodies, and all parts of the bodies of dead animals, and all other chattels personal. Moveable thing.

8. The term "valuable security" shall be deemed to include any unsatisfied debenture and bond, bill, note, warrant, order, or other security for money, or for the payment of money of this or any other country—for the payment for the delivery or transfer of any chattel personal—any tally, order or other security entitling or evidencing title to any share or interest in any public stock or fund of any state or country, or in any fund of any body corporate, company or society, or to any deposit in any savings bank, and any other writing which secures or evidences title to or interest in any chattel personal, or any release, receipt, discharge or other instrument evidencing payment of money, or the delivery of any chattel personal; and every such valuable security shall, where value is material, be deemed to be of value equal to that of such unsatisfied money, chattel personal, share, interest or deposit for the securing or payment of which, or delivery or transfer or sale of which, or for the entitling to or evidencing title to which such valuable security shall be applicable, or to that

- CHAP. 170. of such money or chattel personal, the payment or delivery of which shall be evidenced by such valuable security.
- Muniment of title. 9. The term "muniment of title" shall be deemed to include any writing as before defined in section five of this chapter, which is or shall be evidence of the title, or of any part of the title to any real estate, or to any interest therein; and any entry of the acknowledgment or registry of any such writing, or of any judgment or recognizance of or concerning any real estate, or any interest therein under the provisions of any act of the assembly of this province.
- Cattle. 10. The term "cattle" shall be deemed to include any horse, mule, ass, sheep, pig or goat, whatsoever be the age or sex of the animal; and also every bull, cow, heifer, calf or ox.
- Same subject. 11. When the term "cattle" is used, or any particular animal is mentioned by name, the term shall, unless it be otherwise provided, be deemed to signify living cattle, or a living animal so named.
- Night time and day time. 12. When the term "night time" is used, that time shall be deemed to commence at nine o'clock in the evening of each day, and to conclude at six o'clock in the morning of the next succeeding day; and when the term "day time" is used, that time shall be deemed to commence at six o'clock in the morning and to conclude at nine o'clock in the evening of each day.
- Imprisoned and imprisonment. 13. The terms "imprisoned" and "imprisonment," wheresoever they occur in this title, shall be respectively deemed and taken to mean and include imprisonment in the provincial penitentiary.
- What shall be deemed custody or possession under this title. 14. When the having any matter or thing in the custody or possession of any person is in any chapter of this title expressed to be an offence, if any person shall have any such matter or thing in his personal custody or possession, or shall knowingly or wilfully have any such matter or thing in any dwelling house or other building, lodging, apartment, field, or other place open or enclosed, whether belonging to, or occupied by himself or not, and whether such matter or thing shall be so had for his own use or benefit, or for that of another, any such person shall be deemed and taken to have such matter or thing in his custody or possession within the meaning of such chapter, and where there are two or more persons, any one or more shall, with the knowledge and consent of the rest, have any such matter or thing in his or their custody or possession, it shall be deemed and taken to be in the custody or possession of all such persons.
- Terms to mean as defined, unless where otherwise particularly provided. 15. All terms defined in any part of this title shall, when they occur in any other part thereof, be understood in their defined sense, unless it be otherwise provided, or the chapter, for the purposes of which any such term or terms is or are defined, be particularly specified.

TITLE XLII.

OF THE ADMINISTRATION OF CRIMINAL JUSTICE.

CHAPTER 171.

OF THE ADMINISTRATION OF CRIMINAL JUSTICE IN THE
SUPREME COURT.

1. Any person found committing any offence against property punishable by virtue of this title, may be immediately apprehended without a warrant, by a peace officer, or by the owner of the property, or by his servant, or by any person authorized by him, and forthwith taken before some neighboring justice of the peace, to be dealt with according to law; and if any credible witness shall prove upon oath, before a justice of the peace, a reasonable cause to suspect that any person has in his possession, or on his premises, any property whatsoever, with respect to which any such offence shall have been committed, the justice may grant a warrant to search for such property as in the case of stolen goods; and any person to whom any property shall be offered to be sold, pawned or delivered, if he shall have reasonable cause to suspect that any such offence has been committed with respect to such property, is hereby authorized, and, if in his power, is required to apprehend and forthwith to carry before a justice of the peace, the party offering the same, together with such property, to be dealt with according to law.

Arrest, how made for offences under this title; proceedings thereunder.

2. When any person shall be prosecuted for a misdemeanor either by information or indictment, and shall appear in person or by attorney in term time to answer thereto, such defendant on being charged therewith shall not be permitted to imparl to a following term, but shall plead or demur thereto; and the trial, where a trial shall be required, may thereupon proceed in the same term in the time and in manner in such behalf respectively as may be directed or required by the order, rules or practice of the court; and in default of any such plea or demurrer, judgment for want of a plea may be entered against the defendant in default; but the court on sufficient cause shewn, may allow further time for such defendant to plead or demur to such indictment or information, or to go to trial thereon.

Imparlanee in cases of a misdemeanor to be disallowed, except on special cause shewn.

3. If any person being arraigned upon an indictment for treason or felony shall plead thereto a plea of "not guilty," he shall, by such plea, without any further form, be deemed to have put himself upon the country for trial,

"Not guilty" pleaded in treason or felony, its effect.

CHAP. 171. and the court shall in the usual manner order a jury for the trial of such person accordingly.

Proceedings where a party arraigned shall stand mute.

4. If any person being arraigned upon, or charged with any indictment or information for treason, felony or misdemeanor, shall stand mute of malice, or will not answer directly to the indictment or information, in every such case the court, if it shall so think fit, may order the proper officer to enter the plea of "not guilty" on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

Challenges in cases of treason and felony, to what extent allowed, and when void.

5. If any person indicted for treason or felony shall challenge peremptorily a greater number of men returned to be of the jury than thirty-five in cases of treason and twenty in cases of felony, every peremptory challenge beyond the number so allowed in the said cases respectively shall be entirely void, and the trial of such person shall proceed as if no such challenge had been made.

Plea of attainder, when not allowed.

6. No plea setting forth any attainder shall be pleaded in bar of any indictment, unless the attainder be for the same offence as that charged in the indictment.

Indictment, &c. not to abate by reason of pleas of misnomer, want of addition, &c., proceedings in such case.

7. No indictment or information shall be abated by reason of any dilatory plea of misnomer, or want of addition, or of wrong addition of the party offering such plea, if the court shall be satisfied, by affidavit or otherwise, of the truth of such plea; but in such case the court shall forthwith cause the indictment or information to be amended, according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no dilatory plea had been pleaded.

On indictments for treason or felony the jury shall not be charged to inquire respecting lands, &c. Counsel to be allowed prisoners in trials for felony.

8. Where any person shall be indicted for treason or felony, the jury impannelled to try such person shall not be charged to inquire concerning his lands, tenements or goods, nor whether he fled for such treason or felony.

9. All persons tried for felonies shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto by counsel.

Prisoners, &c. when entitled to copies of examination of witnesses.

10. All persons who shall be held to bail, or committed to prison, for any offence, shall be entitled to require and have on demand from the persons who shall have the lawful custody thereof, and who are hereby required to deliver the same, copies of the examination of the witnesses respectively, upon whose depositions they have been so held to bail or committed to prison, on payment of a reasonable sum for the same, not exceeding three cents for each folio; but if such demand shall not be made before the day appointed for the commencement of the term or sitting of the court, at which the trial of the person on whose behalf such demand shall be made is to take place, such person shall not be entitled to have any copy of such examination of witnesses, unless the court shall be of opinion that such copy may be made and

delivered without delay or inconvenience to such trial; and it shall be competent for the court, if it shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged. CHAP. 171.

11. All persons under trial shall be entitled, at the time of their trial, to inspect without fee or reward, all depositions, or copies thereof, which have been taken against them, and returned in the court before which such trial shall be had.

Persons under trial entitled to inspect all depositions, &c.

12. Benefit of clergy, with respect of persons convicted of felony, shall be abolished; but nothing herein contained shall prevent the joinder in any indictment of any counts which might have been joined before the passing of this chapter.

Benefit of clergy abolished; counts may be joined as heretofore.

13. If any person shall counsel, procure or command any other person to commit any felony, the person so counselling, procuring or commanding, shall be deemed guilty of felony, and may be indicted and convicted either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished; and the offence of the person so counselling, procuring or commanding, howsoever indicted, may be inquired of, tried, determined and punished in the same manner if such offence had been committed at the same place as the principal felony; and in case the principal felony shall have been committed within the body of any county, and the offence of counselling, procuring or commanding shall have been committed within the body of any other county, the last mentioned offence may be inquired of, tried and punished in either of such counties; but no person who shall be once duly tried for any such offence, whether as an accessory before the fact or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

Accessories before the fact, who shall be deemed; how, when and where they may be tried.

14. If any person shall become an accessory after the fact to any felony, the offence of such person may be inquired of, tried, determined and punished, in the same manner as if the act by reason whereof such person shall have become an accessory, had been committed at the same place as the principal felony; and in case the principal felony shall have been committed within the body of any county, and the act by reason whereof any person shall have become accessory, shall have been committed within the body of any other county, the offence of such accessory may be inquired of, tried, determined and punished, in

Accessories after the fact; how, when and where tried.

CHAP. 171. either of such counties; but no person who shall be once duly tried for any offence of being an accessory, shall be again indicted or tried for the same offence.

Accessories may be convicted and punished although the principals have not been attained.

15. If any principal offender shall be in anywise convicted of any felony, it shall be lawful to proceed against any accessory either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding such principal felon shall die or be pardoned, or otherwise delivered before the attainder; and every such accessory shall suffer the same punishment, if he be in anywise convicted, as he should have suffered if the principal had been attainted.

Accessory before the fact in cases of felony may be tried and punished as a principal.

16. If any person shall become an accessory before the fact to any felony, such person may be indicted, tried, convicted and punished in all respects as if he were a principal felon.

Charge how set out on a second indictment for felony, not punishable with death.

17. In any indictment for any felony not punishable with death, committed after a previous conviction for a felony, it shall be sufficient to state that the offender was at a certain time and place convicted of felony, without otherwise describing the previous felony.

Bigamy, in what county it may be tried and punishment therefor inflicted.

18. In every case of bigamy the offence may be dealt with, inquired of, tried and punished in the county where the offender shall be apprehended or be in custody, as if the offence had been actually committed in that county.

Indictment for feloniously stealing or receiving property; how drawn; proceedings thereunder.

19. In every indictment for feloniously stealing property, it shall be lawful to add a count for feloniously receiving the same property, knowing it to have been stolen; and in any indictment for feloniously receiving property, knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing the same property, and where any such indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the jury who shall try the same to find a verdict of guilty, either of stealing the property or receiving it, knowing it to have been stolen; and if such indictment shall have been preferred and found against two or more persons, it shall be lawful for the jury who shall try the same to find all or any of the said persons guilty, either of stealing the property or of receiving it knowing it to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving it, knowing it to have been stolen.

Felonies and misdemeanors committed near the boundaries of counties, or begun in one and completed in another county, where tried and punished.

20. When any felony or misdemeanor shall be committed on the boundary or boundaries of two or more counties, or within the distance of one mile from any such boundary or boundaries, or in any place or places with respect to which it may be uncertain within which of two or more counties such places or places may be situate, or when any felony or misdemeanor shall be begun in one

county and completed in another, every such felony or misdemeanor may be dealt with, inquired of, tried and punished in any of the said counties, in the same manner as if it had been actually and wholly committed therein. CHAP. 171.

21. When any felony or misdemeanor shall be committed on any person, or on or in respect of any property, or in or upon any coach, waggon, cart, sleigh, sled or other carriage whatever, employed in any journey, or shall be committed on any person, or on or in respect of any property on board any vessel or boat whatsoever, employed on any voyage or journey upon any navigable river, canal, or inland navigation, or on or in respect of any property in, upon, or forming part of, any raft whatever, passing in or upon any such navigable river, canal or inland navigation, such felony or misdemeanor may be dealt with, inquired of, tried, determined and punished in any county through any part whereof such coach, waggon, cart, sleigh, sled, carriage, vessel, boat or raft shall have passed in the course of the journey, voyage or passage during which such felony or misdemeanor shall have been committed, in the same manner as if it had been actually committed in such county; and in all cases where the side, centre, or other part of any highway, or the side, bank, centre, or other part of any such river, canal or navigation, shall constitute the boundary of any two counties, such felony or misdemeanor may be dealt with, inquired of, tried and punished in either of the said counties through, or adjoining to, or by the boundary of any part whereof such coach, waggon, cart, sleigh, sled, carriage, vessel, boat or raft shall have passed in the course of the journey, voyage or passage during which such felony or misdemeanor shall have been committed, in the same manner as if it had been actually committed in such county.

Felonies, &c., when committed in a coach, &c., passing though more than one county, or upon a highway, &c., dividing counties, where may be tried and punished.

22. If any person shall commit any offence of forging, or altering any deed, writing, instrument, or other matter whatsoever, or of offering, uttering, disposing of, or putting off, any deed, writing, instrument, or other matter whatsoever, knowing the same to be forged or altered, with intent to defraud any person whomsoever, the offence of every such offender may be dealt with, indicted, tried and punished, and laid and charged to have been committed in any county or place in which he shall be apprehended or in custody, as if his offence had been actually committed in that county or place; and every principal in the second degree, and every accessory, may be dealt with, indicted, tried and punished, and his offence laid and charged to have been committed in any county or place in which the principal offender may be tried.

Forgery, altering deeds, &c., where tried and punished.

23. In all informations or indictments for forgery, or in any manner altering any deed, writing, instrument, or other matter whatever, it shall not be necessary to set forth any copy or fac simile thereof, but it shall be sufficient to

Forged or altered instruments, how described in indictments.

CHAP. 171. describe the same in such manner as would sustain an indictment for stealing the same.

Ownership of
joint property
how described.

24. In any indictment or information for any felony or misdemeanor, whenever it shall be necessary to state the ownership of any property whatsoever, whether real or personal, which shall belong to or be in the possession of more than one person, whether such persons be partners in trade, joint tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state such property to belong to the person so named, and another or others, as the case may be; and whenever in any indictment or information for any felony or misdemeanor, it shall be necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners, or tenants in common, it shall be sufficient to describe them in the manner aforesaid, and this provision shall be construed to extend to all joint stock companies and trustees.

Ownership of
public property
how described.

25. In any indictment or information for any felony or misdemeanor committed in, upon, or with respect to any bridge, court house, jail, house of correction, infirmary, asylum, or other building erected or maintained, in whole or in part, at the public expense, in any county, or on or with respect to any goods or chattels whatsoever, provided for at the public expense in any county, to be used for building, altering or repairing any such bridge, court-house, or other building, or to be used in or with any such bridge, court-house or other building, it shall be sufficient to state any such property, real or personal, to belong to the inhabitants of such county, and it shall not be necessary to specify the names of any such inhabitants.

Ownership of
property in
possession of
public officers,
how described.

26. In any indictment or information for any felony or misdemeanor committed on or with respect to any buildings, or any goods or chattels, or any other property, real or personal, in the occupation, or under the superintendence, charge or management of any public officer or commissioner, or any county or township officer or commissioner, it shall be sufficient to state any such property to belong to the officer or commissioner in whose occupation, or under whose superintendence, charge or management such property shall be, and it shall not be necessary to specify the names of any such officers or commissioners.

Embezzle-
ments, how may
be laid, charg-
ed, and proved.

27. In prosecutions for embezzlement it shall be lawful to charge in the indictment, and proceed against the offender for any number of distinct acts of embezzlement, not exceeding three, which may have been committed by him against the same master, within the space of six months from the first to the last of such acts; and in every such indictment, except where the offence shall relate to any chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation so far as regards the

description of the property, shall be sustained, if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed, shall not be proved, or if he shall be proved to have embezzled any piece of coin or valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly. CHAP. 171.

28. Where any person has been feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of this province, shall die of such stroke, poisoning or hurt, in this province, or being feloniously stricken, poisoned or otherwise hurt, in any place in this province, shall die of such stroke, poisoning or hurt, upon the sea, or at any place out of this province, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before the fact to murder, or after the fact to murder or manslaughter, may be dealt with, inquired of, tried, and punished, in the county or place in this province in which such death, stroke, poisoning or hurt, shall happen, in the same manner in all respects as if such offence had been wholly committed in that county or place.

29. If upon the trial of any person upon an indictment for robbery, it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery but that he did commit an assault with intent to rob, the defendant shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict, that the defendant is guilty of an assault with intent to rob; and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for assaulting with intent to rob; and no person so tried shall be liable to be afterwards prosecuted for the robbery, or for an assault with intent to commit the robbery for which he was so tried.

30. If upon the trial of any person for any misdemeanor it shall appear that the facts given in evidence amount in law to a felony, such person shall not, by reason thereof, be entitled to be acquitted of such misdemeanor, and no person tried for such misdemeanor, shall be liable to be afterwards prosecuted for felony on the same facts unless the court before which such trial may be had, shall think fit, in its discretion, to discharge the jury from giving any verdict upon such trial, and to direct such person to be indicted for felony; in which case such person may be dealt with in all respects

Injuries feloniously inflicted within the province, and a party shall die thereof out of the province, or vice versa, where tried and punished.

Indictment for robbery, where person is guilty of assault.

Persons tried for misdemeanor and found guilty of felony not to be acquitted.

CHAP. 171. as if he had not been put upon his trial for such misdemeanor.

Persons on trial for embezzlement not to be acquitted if guilty of larceny.

31. If upon the trial of any person indicted for the embezzlement as a clerk, servant, or person employed for the purpose or in the capacity of a clerk or servant, it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement, but is guilty of simple larceny, or larceny as a clerk, servant or person employed for the purpose, or in the capacity of a clerk or servant, as the case may be; and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny; and if, upon the trial of any person indicted for larceny, it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement, he shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of embezzlement, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement; and no person so tried for embezzlement or larceny, shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts.

Indictment for receiving stolen goods.

32. If upon the trial of two or more persons indicted for jointly receiving any property, it shall be proved that one or more of such persons separately received any part of such property, it shall be lawful for the jury to convict upon such indictment such of the persons as shall be proved to have received any part of such property.

Indictment against accessories.

33. Any number of accessories or receivers may be charged with substantive felonies in the same indictment notwithstanding the principal felon shall not be included in such indictment, or shall not be in custody or amenable to justice.

Several counts of distinct acts of stealing in an indictment.

34. It shall be lawful to insert several counts in the same indictment against the same person for any number of distinct acts of stealing not exceeding three, which may have been committed by him against the same person within the space of six months from the first to the last of such acts, and to proceed thereon for all or any of them.

Proceedings on trial where property stolen at different times.

35. If upon the trial of any indictment for larceny, it shall appear that the property alleged in such indictment to have been stolen at one time, was taken at different times, the prosecutor shall not, by reason thereof, be required to elect upon which taking he will proceed, unless it shall appear that there were more than three takings, or that more than six months elapsed between the first and

the last of such takings; and in either of such last mentioned cases, the prosecutor shall be required to elect to proceed for such number of takings, not exceeding three, as appear to have taken place within the period of six months from the first to the last of such takings.

36. In every indictment, in which it shall be necessary to make any averment as to any money, or any treasury or bank note, it shall be sufficient to describe such money or note simply as money, without specifying any particular coin or note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any treasury or bank note, although the particular species of coin of which such amount was composed, or the particular nature of the note shall not be proved; and in cases of embezzlement, and obtaining money or treasury or bank notes by false pretences, by proof that the offender embezzled or obtained any piece of coin or any note, or any portion of the value thereof, although such piece of coin or note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person, and such part shall have been returned accordingly.

Description of money, bank notes, &c., in indictments.

37. When any person shall be convicted of an assault with intent to commit a felony, the court may sentence the offender to be committed to jail or imprisoned in the penitentiary for a term not exceeding two years, as it shall direct; and may also, if it shall so think fit, require him to find sureties for keeping the peace.

Punishment for an assault with intent to commit a felony.

38. In an indictment for any offence within the meaning of the twelfth section of chapter one hundred and sixty-seven, it shall not be necessary to allege that the article in respect of which the offence is committed is the property of any person, or that the same is of any value.

No allegation of property necessary in prosecutions for offences under section 12, chap. 167.

39. In an indictment of any offence within the meaning of the thirteenth section of chapter one hundred and sixty-seven, it shall be sufficient to allege the thing stolen to be evidence of the title or part of the title of the persons or some one of the persons having a present interest, whether legal or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof; and it shall not be necessary to allege the thing stolen to be of any value.

What allegations sufficient for prosecution of offences under section 13, chap. 167.

40. If any person shall receive any chattel, money, valuable security or other property, the stealing, taking, obtaining or converting whereof is an indictable misdemeanor, such person knowing the same to have been unlawfully stolen, taken, obtained or converted, every such receiver shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been

Receivers of stolen goods, &c., how indicted, convicted and punished.

CHAP. 171. previously convicted thereof, or shall or shall not be amenable to justice; and every such receiver shall be punished in the manner provided for the person guilty of the principal misdemeanor.

Receivers of stolen goods, &c., where may be indicted, convicted, and punished.

41. If any person shall receive any chattel, money, valuable security or other property, knowing the same to have been feloniously or unlawfully stolen, taken, obtained or converted, every such person, whether charged as an accessory after the fact to the felony or with a substantive felony, or with a misdemeanor only, may be dealt with, indicted, tried and punished in any county or place in which he shall have or shall have had any such property in his possession, or in any county or place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried and punished in the county or place where he actually received such property.

Stolen goods, when and to whom to be restored.

42. If any person guilty of any felony or misdemeanor, in stealing, taking, obtaining or converting, or in knowingly receiving any chattel, money, valuable security or other property, shall be indicted for any such offence, by or on the behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner, or his representative; and the court before whom any such person shall be convicted, shall have power to order the restitution thereof, and the court may in like manner, if it shall see fit, order the restitution of property in cases where the party so indicted as aforesaid may not be convicted, if the jury shall declare that the property is in the prosecutor, and had been stolen, or taken or obtained from him by felony or misdemeanor aforesaid,—provided always, that if it shall appear, before any award or order made, that any valuable security shall have been *bona fide* paid or discharged by some person, or body corporate, liable to the payment thereof, or being a negotiable instrument, shall have been *bona fide* taken, or received by transfer or delivery, by some person or body corporate, for a just and valuable consideration, without any notice, or without any reasonable cause to suspect that the same had by any felony or misdemeanor been stolen, taken, obtained or converted as aforesaid, in such case the court shall not award or order the restitution of such security.

Certificate of conviction for previous felony how given and proved; punishment for false certificates.

43. In any indictment for a felony, not punishable with death, committed after a previous conviction of felony, a certificate containing the substance and effect, omitting the formal part of the indictment and conviction for the previous felony, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk or officer, shall upon proof of the iden-

tity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same; and if any such clerk, officer or deputy, shall utter a false certificate of any indictment and conviction for a previous felony, or if any person other than such clerk, officer or deputy, shall sign any such certificate as such clerk, officer or deputy, or shall utter any such certificate with a false or counterfeit signature thereto, every such offender shall be guilty of felony. CHAP. 171.

44. Any quaker or moravian who shall be required to give evidence in any criminal case, shall instead of taking an oath in the usual form, be permitted to take his solemn affirmation or declaration in the words following, that is to say: "I, A. B., do solemnly, sincerely and truly declare and affirm;" which said affirmation or declaration shall be of the same force and effect in all courts of justice and other places, where by law an oath is required, as if such quaker or moravian had taken an oath in the usual form. Quaker or Moravian may make solemn affirmation; form given.

45. No judgment upon any indictment or information for any felony or misdemeanor, whether after verdict or outlawry, or by confession, default or otherwise, shall be stayed or reversed for want of averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record" or of the words "with force and arms," or of the words "against the peace," nor for the insertion of the words "against the form of the statute" instead of the words "against the form of the statutes," or vice versa, nor for that any person or persons mentioned in the indictment or information is or are designated by a name of office or other descriptive appellation instead of his, her, or their proper name or names, nor for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment or exhibiting the information, or on an impossible day, or on a day that never happened; nor for want of a proper or perfect venue, where the court shall appear by the indictment or information to have had jurisdiction over the offence. Judgments not to be stayed or reversed for want of formal averments unnecessary to be proved, or other slight imperfections.

46. No judgment after verdict upon any indictment or information for any felony or misdemeanor, shall be stayed or reversed for want of a similiter, nor by reason that the jury process has been awarded to a wrong officer upon an insufficient suggestion, nor for any misnomer or misdescription of the officer returning such process, or of any of the jurors, nor because any person has served upon the jury who has not been returned as a juror by the sheriff or other officer, and that where the offence charged has been created by any statute, or subjected to a greater degree of punish- Same subject.

CHAP. 171. ment by any statute, the indictment or information shall, after verdict, be held sufficient to warrant the punishment prescribed by the statute, if it describe the offence in the words of the statute.

Sentence for felony where party imprisoned or already sentenced for another crime.

47. Wherever sentence shall be passed for felony on a person already imprisoned under sentence for another crime, it shall be lawful for the court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced; and where such person shall be already under sentence of imprisonment, the court may award such sentence for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced, although the aggregate term of imprisonment may exceed the term for which punishments could be otherwise awarded.

Punishment of the pillory and whipping abolished.

48. Judgment or sentence shall not be given and awarded against any person convicted of any offence, that such person do suffer the punishment of being set in the pillory, or of having his ears nailed thereto or cut off, or do suffer the punishment of being whipped.

Persons convicted of murder, how to be kept and fed after judgment.

49. Every person convicted of murder shall, after judgment, be confined in some place within the prison apart from all other prisoners, and shall be fed with bread and water only, and with no other food or liquor except in case of receiving the sacrament, or in case of any sickness or wound, in which case the surgeon of the prison may order other necessaries to be administered; and no person but the jailer or his servants, and the chaplain and surgeon of the prison, shall have access to any such convict without the permission in writing of the court or judge before whom such convict shall have been tried, or of the sheriff or his deputy—provided always, that in case the court or judge shall think fit to respite the execution of such convict, such court or judge may, by a license in writing, relax during the period of the respite all or any of the restraints or regulations hereinbefore directed to be observed.

Pardons to felons and their effect as to subsequent convictions.

50. Where the queen's majesty shall be pleased to extend her royal mercy to any offender convicted of any felony punishable with death or otherwise, and by warrant under her royal sign manual, countersigned by one of her principal secretaries of state, shall grant to such offender either a free or a conditional pardon, the discharge of such offender out of custody in the case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the great seal for such offender, as to the felony for which such pardon shall be so granted—provided always, that no free pardon, nor any such discharge in consequence thereof, nor any conditional pardon, nor the performance of the condi-

tion thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction, for any felony committed after the granting of such pardon. CHAP. 171.

51. Where any offender hath been or shall be convicted of any felony not punishable with death, and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, the punishment so endured hath and shall have the like effects and consequences as a pardon under the great seal as to the felony whereof the offender was so convicted—provided always, that nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any other felony.

Punishment endured for felonies not punishable with death to have the effect of pardons.

52. It shall and may be lawful for the judge or judges of any of the superior courts of common law or equity, in case it shall appear to him or them that any person has been guilty of wilful and corrupt perjury in any evidence given, or in any affidavit, deposition, examination, answer or other proceeding made or taken before him or them, to direct such person to be prosecuted for such perjury, in case there shall appear to him or them a reasonable cause for such prosecution, and to commit such person, so directed to be prosecuted, until the next term of the supreme court for the county within which such perjury was committed, unless such person shall enter into a recognizance with one or more surety or sureties conditioned for the appearance of such person at such next term of the supreme court, and that he will then surrender and take his trial, and not depart the court without leave, and to require any person he or they may think fit to enter into a recognizance conditioned to prosecute or give evidence against such person so directed to be prosecuted.

Judges may direct prosecutions against persons appearing to be guilty of perjury in evidence, &c., given before them.

53. In every indictment for perjury, or for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly, taking, making, signing or subscribing any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, or before whom the oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing, was taken, made, signed, or subscribed, without setting forth the bill, answer, information, indictment, declaration or any part of any proceeding either in law or in equity, and without setting forth the commission or authority of the court or person before whom such offence was committed.

In indictments for perjury, the substance of the offence may be set forth.

54. In every indictment for subornation of perjury, or for corrupt bargaining or contracting with any person to

Indictments for subornation of perjury.

CHAP. 171. commit wilful and corrupt perjury, or for inciting, causing or procuring any person unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly, to take, make, sign or subscribe any oath, affirmation, declaration, affidavit, deposition, bill, answer, notice, certificate or other writing, it shall be sufficient, whenever such perjury or other offence shall have been actually committed, to allege the offence of the person who actually committed such perjury, in the manner hereinbefore mentioned, and then to allege that the defendant unlawfully, wilfully, and corruptly did cause and procure the said person, the said offence, in manner and form aforesaid to do and commit; and wherever such perjury or other offence shall not have been actually committed, it shall be sufficient to set forth the substance of the offence, charged upon the defendant, without setting forth or averring any of the matters or things hereinbefore rendered unnecessary to be set forth or averred in the case of wilful and corrupt perjury.

Competency of witnesses on trial for forgery &c.

55. On any prosecution by indictment or information against any person for forging any deed, writing, instrument or other matter, or for uttering or disposing of any deed, writing, instrument or other matter, knowing the same to be forged, or for being accessory to any such offence if the same be a felony, or for aiding, abetting or counselling the commission of any such offence if the same be a misdemeanor, no person shall be deemed to be an incompetent witness in support of any such prosecution by reason of any interest which such person may have or be supposed to have in respect of such deed, writing, instrument, or other matter.

Amendment of indictments, informations, &c.

56. It shall be lawful for the court, if it shall see fit, to cause the indictment or information for any offence when any variance shall appear between any matter in writing or in print produced in evidence, and the recital or setting forth thereof in the indictment or information whereon the trial is pending, to be forthwith amended in such particular or particulars by some officer of the court, and after such amendment the trial shall proceed in the same manner in all respects both with regard to the liability of witnesses to be indicted for perjury and otherwise, as if no variance had appeared.

On an indictment for child-murder the jury may find the mother guilty of endeavouring to conceal the birth.

57. If on the trial of any woman for murder of her child she shall be acquitted thereof, it shall be lawful for the jury by whose verdict she shall be acquitted, to find in case it shall so appear in evidence, that she was delivered of a child, and that she did by secret burying or otherwise disposing of the dead body of such child endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth.

58. Whenever the governor shall exercise the prerogative of the crown, by extending mercy to any offender convicted of any crime punishable with death, upon condition of imprisonment with hard labor in the provincial penitentiary either for the term of life or for any number of years, and shall make the same known to the court before which such offender hath been or shall be convicted, such court shall allow to such offender the benefit of a conditional pardon, and make an order for the immediate imprisonment of such offender under and upon the terms and conditions therein expressed; and in case such intention of mercy shall be made known to any judge of the supreme court, such judge shall allow to such offender the benefit of a conditional pardon, and make an order for the immediate imprisonment, with hard labor, of such offender in the provincial penitentiary, in the same manner as if such intention of mercy had been signified to any such court as aforesaid; and such allowance and order shall be considered an allowance and order made by the court before which such offender was convicted, and shall be entered on the records of the same court by the proper officer thereof, and shall be as effectual to all intents and purposes and have the same consequences as if such allowance and order had been made by the same court during the continuance thereof; and every such order, whether made by the court or any judge of the supreme court as aforesaid, shall subject the offender to be conveyed to the provincial penitentiary and there kept to hard labor during the term of imprisonment mentioned therein, in like manner as if such imprisonment had been imposed as a punishment by the sentence of any court by authority of law.

CHAP. 171.

Proceedings where sentence of death is commuted by the exercise of the prerogative.

59. Any person that shall hereafter be committed to jail for any offence or misdemeanor, having means or ability thereunto, shall bear his own reasonable charges for conveying or sending him to jail, and the charges also of such as shall be appointed to guard him and shall so guard him thither; and if any person shall refuse to defray such charges, then a justice of the peace, by writing under his hand and seal, shall give warrant to any constable to sell so much of the goods and chattels of the said person so to be committed as by the discretion of the said justice shall satisfy and pay the charge of his conveying and sending to the jail, the appraisement to be made by two inhabitants of the town or place where such goods or chattels shall be, and the overplus of the money which shall be made thereof to be delivered to the party to whom such goods shall belong.

Charges of conveying prisoners to jail to be defrayed by themselves when of ability; proceedings to recover the same.

60. If the person so to be committed shall not have or be known to have any goods or chattels which may be sold for such purpose, then the said justice, on application by any constable or other officer who so conveyed such person

Constables expenses, how allowed and paid.

CHAP. 171. to jail, shall upon oath examine into and ascertain the reasonable expenses to be allowed such constable or other officer, and shall forthwith, without fee, by warrant under his hand and seal, order the treasurer of the county to pay the same, which the treasurer is hereby required to do as soon as he receives such warrant, and any sum so paid shall be allowed in his accounts.

Poor witnesses, how may be paid their expenses.

61. When any poor person shall appear on recognizance in any court, to give evidence against another accused of any felony or misdemeanor, it shall be in the power of the court, if it shall think fit, at the prayer and on the oath of such person, and on consideration of his circumstances, in open court to order the treasurer of the county in which the offence shall have been committed, to pay unto such person such sum of money as to the court shall seem reasonable for his time, trouble and expense; which order the proper officer shall make out and deliver unto such person upon being paid for the same the sum of ten cents and no more; and such treasurer is hereby required, upon delivery of such order, forthwith to pay to such person or other person authorized to receive the same, such sum of money as aforesaid, and shall be allowed the same in his accounts.

Where county treasurers have no funds the expenses mentioned in the two last sections to be paid out of the public treasury.

Fees on criminal trials for witnesses on the part of the prosecution.

62. In case such treasurer shall not have any money in his hands to pay the sum so ordered for conveying poor prisoners to jail, or for the attendance of witnesses, the same shall be paid out of the public treasury of the province.

63. All witnesses on criminal trials attending on the part of the prosecution, shall be entitled, under the sanction of the court or a judge, to receive from the county treasurer the same fees for their travel and actual attendance as witnesses in civil suits are now entitled to receive; such fees to be paid on the certificate of the attorney or solicitor general, queen's counsel, or officer appointed by a judge to conduct such prosecution, that such witnesses duly attended under subpoena and gave evidence at such trials, and are entitled to receive therefor the amount therein stated, and such subpoenas shall be produced on taxation.

County treasurer to pay the amount.

64. The county treasurer is required, upon the delivery of the prothonotary's certificate, to pay the amount of the fees mentioned therein.

In the absence of the attorney and solicitor general the court shall appoint officers to prosecute on behalf of the crown; costs, how taxed.

65. Whenever, in the absence of the attorney general and solicitor general, it shall appear to the court expedient and necessary to appoint any one counsel, to conduct and manage on behalf of her majesty, the proceedings and trial of any criminal prosecutions pending before the court, it shall be lawful for the court to direct any queen's counsel present therein, or, in his absence, to appoint from among the barristers attending thereat, some one competent person to conduct and manage such proceedings, and to tax

and allow to him for his services such reasonable fees as he would have been entitled to for the like services as the attorney of any party in a civil action, together with such reasonable counsel fees not exceeding for any one prosecution the sum of twenty dollars, as the court shall deem adequate to the services performed on such prosecution. But the costs to be taxed shall in no case exceed thirty dollars for all writings and papers and for all counsel fees therein; and on the allowance and taxation the court shall not allow for any but necessary services and expenses, and notice of the time and taxation shall be given to the clerk of the crown or his deputy.

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66. Upon the production of a certificate under the seal of the court of the amount so taxed and allowed, it shall be lawful for the governor to grant his warrant therefor upon the receiver general, who shall pay the amount.

Costs taxed,
how paid.

67. In all cases where the party prosecuted shall be convicted and be found by the court of ability to pay the expenses of prosecution, to be taken under this chapter, the court shall adjudge such defendant to pay the expenses of prosecution, and shall issue execution accordingly, and the amount shall be paid to the receiver general.

Party convicted
if of ability,
may be adjudged
to pay the
expenses of
prosecution.

68. A certificate containing the substance and effect only, omitting the formal part of the indictment and trial for any felony or misdemeanor, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where such indictment was tried, or by the deputy of such clerk or other officer, for which certificate no fee shall be demanded or paid, shall upon the trial of any indictment for perjury or subornation of perjury, be sufficient evidence of the trial of such indictment [for felony or misdemeanor, without proof of the signature or official character of the person appearing to have signed the same.

Certificate of
clerk of crown
sufficient for
indictment for
perjury.

69. It shall not be necessary to state any venue in the body of any indictment, but the county named in the margin thereof shall be taken to be the venue for all the facts stated in the body of such indictment, provided that in cases where local description is or hereafter shall be required, such local description shall be given in the body of the indictment.

No venue to be
stated.

70. No indictment for any offence shall be held insufficient for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record," or of the words "with force and arms," or of the words "against the peace," nor for the insertion of the words "against the form of the statute" instead of "against the form of the statutes," or vice versa, nor for that any person mentioned in the indictment is designated by a name of office or other descriptive appellation instead of his proper name, nor for omitting to state the time at

When indictment
not to be
held insufficient.

CHAP. 171. which the offence was committed in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, nor on an impossible day or on a day that never happened, nor for want of a proper or perfect venue, nor for want of a proper or formal conclusion, nor for want of or imperfection in the addition of any defendant, nor for want of the statement of the value or price of any matter or thing, or the amount of damage, injury, or spoil, in any case where the value or price, or the amount of damage, injury or spoil, is not of the essence of the offence.

Objections to indictment when to be taken.

71. Every objection to any indictment for any formal defect apparent on the face thereof, shall be taken by demurrer or motion to quash such indictment, before the jury shall be sworn, and not afterwards; and every court before which any such objections shall be taken, for any formal defect, may, if it be thought necessary, cause the indictment to be forthwith amended in such particular, by some officer of the court or other person, and thereupon the trial shall proceed as if no such defect had appeared.

No person prosecuted shall postpone the trial of indictment against him.

72. No person prosecuted shall be entitled to traverse or postpone the trial of any indictment found against him; provided, that if the court, upon the application of the person so indicted, or otherwise, shall be of opinion that he ought to be allowed a further time, either to prepare for his defence or otherwise, such court may adjourn the trial of such person to the next subsequent session, upon such terms, as to bail or otherwise, as to such court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case the prosecutor and witnesses shall be bound to attend, to prosecute and give evidence at such subsequent session, without entering into any fresh recognizance for that purpose.

Pleas of autre-fois convict.

73. In any plea of autre-fois convict, or autre-fois acquit, it shall be sufficient for any defendant to state that he has been lawfully convicted or acquitted, as the case may be, of the offence charged in the indictment.

Definition of the word "indictment."

74. In the construction of this chapter the word "indictment" shall be understood to include information, inquisition, and presentment, as well as indictment, and also any plea, replication, or other pleading, and any record; and the terms "finding of the indictment," shall be understood to include the taking of an inquisition, the exhibiting of an information, and the making a presentment; and the word "property" shall be understood to include goods, chattels, money, valuable securities, and every other matter or thing, whether real or personal, upon or with respect to which any offence may be committed.

Criminals may be sentenced during sittings at Halifax.

75. A judge of the supreme court may sentence convicted criminals, on any day of the sittings at Halifax, as well as in term time.

76. Whenever on the trial of any indictment for any felony or misdemeanor, there shall appear to be any variance between the statement in such indictment and the evidence offered in proof thereof, in the name of any county, division, city, borough, town corporate, parish, township or place, mentioned or described in any such indictment, or in the name or description of any person stated or alleged to be the owner of any property, real or personal, which shall form the subject of any offence charged therein, or in the name or description of any person therein stated or alleged to be injured or damaged, or intended to be injured or damaged by the commission of such offence, or in the christian name or surname, or both, or in the other description whatsoever of any person therein named or described, or in the name or description of any thing therein named or described, or in the ownership of any property therein named or described, it shall be lawful for the court before which such trial shall be had, if it shall consider such variance not material to the merits of the case, and that the defendant cannot be prejudiced thereby in his defence on such merits, to order such indictment to be amended according to the proof, by some officer of the court or other person, both in that part of the indictment where such variance occurs and in every other part of the indictment which it may become necessary to amend, on such terms as to postponing the trial to be had before the same or another jury or otherwise as such court shall think reasonable; and after any such amendment the trial shall proceed whenever the same shall be proceeded with in the same manner in all respects and with the same consequences with respect to the liability of witnesses to be indicted for perjury and otherwise as if no such variance had occurred; and in all such cases the order for the amendment shall either be endorsed on the indictment or engrossed and filed with the indictment and records of the court—provided that in all such cases where the trial shall be so postponed, it shall be lawful for the court to respite the recognizance of the prosecutor and witnesses, and of the defendant and his sureties, if any, in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence respectively; and the defendant shall be bound to attend to be tried at the time and place to which such trial shall be postponed, without entering into any fresh recognizances for that purpose, in the same manner as if they had been originally bound by their recognizances to appear and prosecute, or give evidence at the time and place to which such trial shall have been so postponed;—provided also, that where any such trial shall be to be had before another jury, the crown and the defendant shall respectively be entitled to the same challenges as they were entitled to before the first jury was sworn.

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Amendment of
indictments.

- CHAP. 171.** 77. Every verdict and judgment which shall be given after the making of any amendment under the provisions of the last section, shall be of the same force and effect in all respects as if the indictment had originally been in the same form in which it was after such amendment was made.
- Verdicts where amendments made.
- Records in cases of amendments.
78. If it shall become necessary at any time, for any purpose, to draw up a formal record in any case where any amendment shall have been made under the provisions of section seventy-six, such record shall be drawn up in the form in which the indictment was after such amendment was made, without taking any notice of the fact of such amendment having been made.
- Indictment for murder and manslaughter.
79. In any indictment for murder or manslaughter, it shall not be necessary to set forth the manner in which or the means by which the death of the deceased was caused; but it shall be sufficient in every indictment for murder to charge that the defendant did feloniously, wilfully and of his malice aforethought kill and murder the deceased; and it shall be sufficient in every indictment for manslaughter to charge that the defendant did feloniously kill and slay the deceased.
- Indictment for forgery, &c.
80. In any indictment for forging, uttering, stealing, embezzling, destroying or concealing, or for obtaining by false pretences any instrument, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out any copy or *fac simile* thereof, or otherwise describing the same or the value thereof.
- Indictment for engraving, &c.
81. In any indictment for engraving or making the whole or any part of any instrument or thing, or for using or having the unlawful possession of any plate or other material, upon which the whole or any part of any instrument or thing shall have been engraved or made, or for having the unlawful possession of any paper upon which the whole or any part of any instrument or thing shall have been made or printed, it shall be sufficient to describe such instrument or thing by any name or designation by which the same may be usually known, without setting out any copy or *fac simile* of the whole or any part of such instrument or thing.
- Description of instrument in indictment.
82. In all other cases, wherever it shall be necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof, without setting out a copy or *fac simile* of the whole or any part thereof.
- Allegation necessary in the indictment.
83. It shall be sufficient in any indictment for forging, uttering, offering, disposing of, or putting off any instrument, or for obtaining or attempting to obtain any pro-

perty by false pretences, to allege that the defendant did the act with intent to defraud, without alleging the intent of the defendant to defraud any particular person, and on the trial of any of the offences in this section mentioned, it shall not be necessary to prove an intent on the part of the defendant to defraud any particular person, but it shall be sufficient to prove that the defendant did the act charged with an intent to defraud. CHAP. 171.

84. If on the trial of any person charged with any felony or misdemeanor, it shall appear to the jury upon the evidence that the defendant did not complete the offence charged, but that he was guilty only of an attempt to commit the same, such person shall not, by reason thereof, be entitled to be acquitted, but the jury shall be at liberty to return as their verdict, that the defendant is not guilty of the felony or misdemeanor charged, but is guilty of an attempt to commit the same; and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for attempting to commit the particular felony or misdemeanor charged in such indictment; and no person tried as lastly mentioned shall be liable to be afterwards prosecuted for committing or attempting to commit the felony or misdemeanor for which he was so tried.

Verdict of jury in cases where offences are not completed.

85. Whosoever on trial for any felony whatever, and which shall include an assault, shall be convicted of assault, shall be committed to jail or imprisoned in the penitentiary as the court shall direct, for a term not exceeding five years, and shall be fined at the discretion of the court.

Persons convicted of assault; where confined.

86. The governor in council may order a special sitting of the supreme court in any of the counties of this province for the trial of prisoners charged with felonies.

Special sittings of supreme court of for trial of prisoners.

87. Such order shall appoint a particular day when the court shall be held, and shall be published in the royal gazette for at least three weeks before the day appointed for the opening of the court. Immediately upon the order being made, the clerk of the executive council shall transmit copies thereof to the chief justice, and to the prothonotary and to the sheriff of the county wherein the special sitting of the court is to be held.

Order to be published in the gazette for three weeks previous, &c.

88. Upon the receipt of the order by the prothonotary, he shall issue venirens for the grand and petit jury to meet at the time specified therein, and the sheriff shall immediately summon such juries, with constables and other officers whose attendance is required at such sitting, who shall be liable to the same penalties for non-attendance as when summoned to attend the ordinary terms or sittings of the court.

Summoning jurors and necessary officers.

89. Any judge of the supreme court may preside at such special sitting, and all trials, judgments and proceed-

Presiding judge—proceedings to have same force as if had

CHAP. 171. ings thereat, shall have the same force and effect as if such trials, judgments and proceedings had taken place at one of the ordinary terms or sittings of the court.

at ordinary terms or sittings.

Presiding judge may adjourn sittings.

Extended to trials for misdemeanors.

90. The presiding judge may adjourn the sittings from day to day as occasion may require.

91. The provisions of the last five sections may be extended to the trials of criminals charged with misdemeanors.

Finding of jury on trial of insane persons.

92. In all cases where it shall be given in evidence upon the trial of any person charged with treason, murder, or felony, or any misdemeanor, that such person was insane at the time of the commission of such offence, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity, and if they shall find that such person was insane at the time of the committing such offence, the court, before whom such trial shall be had, shall order such person to be kept in strict custody, in such place, and in such manner, as to the court shall seem fit, until the pleasure of the governor in council shall be known; and it shall thereupon be lawful for the governor in council to give such order, for the safe custody of such person, during his pleasure, in such place and in such manner, as to the governor in council shall seem fit; and in all cases where any person has been acquitted of any such offences, on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person, by order of the court before whom such person has been tried, and still remains in custody, it shall be lawful for the governor in council to give the like order for the safe custody of such person, during his pleasure, as he is hereby enabled to give in the cases of persons who shall hereafter be acquitted on the ground of insanity.

Custody of such persons.

Proceedings on arraignment of insane persons.

93. If any person indicted for any offence shall be insane, and shall, upon arraignment be found so to be, by a jury lawfully empannelled for that purpose, so that such person cannot be tried upon such indictment, or if, upon trial of any person so indicted, such person shall appear to the jury charged with such indictment, to be insane, it shall be lawful for the court before whom any such person shall be brought to be arraigned or tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody until the pleasure of the governor in council shall be known; and if any person charged with any offence shall be brought before any court, to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such court to order a jury to be empannelled to try the sanity of such person, and if the jury so empannelled shall

find such person to be insane, it shall be lawful for such court to order such person to be kept in strict custody, in such place and in such manner as to such court shall seem fit, until the pleasure of the governor in council shall be known; and in all cases of insanity so found, it shall be lawful for the governor in council to give such order for the safe custody of such person so found to be insane during his pleasure, in such place, and in such manner, as to him shall seem fit. CHAP. 171.

94. If any person against whom a warrant may be issued by the chief justice of the queen's bench, or supreme court, or by any other justice having competent authority, in any of her majesty's provinces or governments in North America respectively, for any felony or other crime of a high nature, escapes into or is found in any part of Nova Scotia, any justice of the peace of the county, city or place where such person resides or is supposed to be, may, upon due proof being made of the handwriting of such chief or other justice who issued the warrant, endorse his, the said justice's, name thereon; and such warrant so endorsed shall be a sufficient authority to all persons to whom such warrant was originally directed, and also to all constables and policemen of the county, city or place where such warrant has been so endorsed, to execute the same by apprehending the person or persons against whom such warrant has been granted, and to convey him or them into the province or government from which such warrant was originally issued, to be dealt with according to law.

Upon proof of handwriting of justice who has issued a warrant for felony against person escaped into this province, a justice here may endorse warrant, which shall be sufficient authority to arrest the party and take him into the province where warrant issued.

95. In all cases where an offender is made liable to imprisonment under any statute of this province, the judges of the supreme court may direct the imprisonment to be in the provincial penitentiary, or in the common jail of the county, at their discretion; but if the judge shall direct the imprisonment to be in the common jail, such imprisonment shall not extend beyond the period of six months.

Judge may direct imprisonment in penitentiary or common jail.

96. All fines and forfeitures levied and collected by the judgment of the supreme court in any of the counties of this province, shall be paid into the hands of the county treasurer for such counties respectively.

All fines, &c., to be paid to county treasurer.

97. The fines and forfeitures so paid to the county treasurer shall be paid and applied by him towards the payment of witnesses attending criminal trials, and also witnesses attending prosecutions for offences committed against the provisions of the first and second sections of chapter one hundred and sixty-three of the revised statutes, "Of offences against the administration of justice," under the same rules and regulations as provided by the act hereby amended.

How applied.

98. Witnesses for the prosecution attending before the grand jury, in criminal cases, and witnesses for the prosecution attending on the trial of indictments, shall be entitled

Witnesses entitled to fees.

CHAP. 171. to fees, as prescribed by section sixty-three of this chapter, notwithstanding that such attendance may not have been under subpoena or recognizance; provided that the court or a judge shall be satisfied, by affidavit, that there was reasonable ground for instituting the proceedings, and that the attendance of the witnesses was material and necessary, and that they attended expressly to give such evidence and for no other purpose.

99. When a person has been convicted of criminal treason, felony, or misdemeanor, before any court of oyer and terminer, or jail delivery, the judge before whom the case was tried may, in his discretion, reserve any questions of law which arose on the trial, for the consideration of the justices of the supreme court at Halifax, and thereupon may respite execution of the judgment on such conviction, or postpone the judgment until such question has been considered and decided; and in either case the court at which the trial took place shall, in its discretion, commit the person convicted to prison, or take a recognizance of bail, with one or two sufficient surety or sureties in such sums as the court thinks fit, conditioned for his appearance at such time as the court directs, to receive judgment, or to render himself in execution, as the case may be.

Judge may reserve question of law.

Proceedings when question reserved.

Judge shall state and sign case, to be sent to Halifax.

100. The judge shall thereupon state, in a case to be signed by him, the question or questions of law so reserved, with the special circumstances upon which the same arose; and such case shall be transmitted by the judge to the prothonotary of the supreme court at Halifax, on or before the first day of the term of such supreme court at Halifax, next after the time where such trial was had.

Supreme court shall hear same and make order thereon.

101. The justices of the supreme court shall hear and finally determine the said questions, and reserve, affirm, or amend any judgment given on the indictment or inquisition on the trial whereof such questions arose, or shall avoid such judgment or order, an entry to be made on the record that in the judgment of the said justices the party convicted ought not to have been convicted, or shall arrest the judgment; or, if no judgment has been given, shall order judgment to be given thereon at some future session of oyer and terminer, or jail delivery, or shall make such other order as justice may require.

Judgment and order to be certified and sent to sheriff.

102. The judgment and order of the said justices shall be certified under the hand of the chief justice, or senior judge, of such court, to the clerk of the crown of the county in which the trial took place, who shall enter the same on the original record in proper form; and a certificate of such entry, under the hand of the clerk of the crown, in the form as near as may be, or to the effect mentioned in the schedule annexed to this chapter, with

the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the sheriff or jailer in whose custody the person convicted is; and the said certificate shall be sufficient warrant to such sheriff or jailer, and all other persons, for the execution of the judgment as so certified to have been affirmed or amended, and execution shall thereupon be executed on such judgment; or if the judgment has been reversed, avoided or arrested, the person convicted shall be discharged from further imprisonment, and the next court of oyer and terminer, or jail delivery, shall vacate the recognizance of bail, if any.

CHAP. 172.

Sheriff to act in
accordance
therewith.

103. The judgments of the justices of the said supreme courts shall be delivered in open court, after hearing counsel, or the parties, in case the prosecutor or person convicted thinks it fit that the case should be argued, in like manner as the judgments of the said supreme court are delivered.

Judgments—
how delivered.

SCHEDULE.

Whereas at the supreme court for the county of ———, held on ———, before the Honorable ———, one of the justices of the said court, A B, late of ———, having been found guilty of felony and judgment thereon given, that [*state the substance*] the court before whom he was tried reserved a certain question of law for the consideration of the justices of the supreme court at Halifax, and execution was thereupon respited in the meantime [*as the case may be*]. This is to certify that the justices of the supreme court at Halifax, having met at Halifax in ——— term, it was considered by the said justices there that the judgment aforesaid should be annulled, and an entry made on the record that the said A B ought not, in the judgment of the said justices, to have been convicted of the felony aforesaid, and you are hereby required forthwith to discharge the said A B from your custody.

(Signed)

E. F.

CHAPTER 172.

OF THE DUTIES OF JUSTICES OF THE PEACE IN CRIMINAL MATTERS.

1. In all cases where a charge or complaint (A.) shall be made before a justice that a person has committed or is suspected of having committed any indictable offence within the limits of the jurisdiction of such justice, or that a per-

Persons guilty
or suspected of
an indictable
offence, how
apprehended.

CHAP. 172. son has committed or is suspected to have committed an indictable offence out of the jurisdiction of such justice and is residing or is suspected to be within the limits of the jurisdiction of such justice, if the person so charged or complained against shall not then be in custody, such justice shall issue his warrant (B.) to apprehend such person, to be dealt with as therein and thereby directed; but instead of a warrant in the first instance, the justice, if he think fit, may issue his summons (C.) requiring such person to appear at a certain time and place therein mentioned to answer to the charge preferred. If after being served with such summons in manner hereinafter prescribed, such person shall fail to appear in obedience thereto, such justice, or any other justice of the county, may issue his warrant (D.) to apprehend such person to be dealt with as in such last mentioned warrant directed. But nothing in this section contained shall prevent a justice from issuing the warrant hereinbefore first mentioned at any time before or after the time mentioned in the summons for the appearance of the accused party.

When the offence is committed on the high seas or on land beyond the seas.

2. In all cases of indictable offences committed on the high seas, or in any creek, harbor, haven or other place in which the admiralty of England have or claim to have jurisdiction, and in all cases of offences committed on land beyond the seas for which an indictment may be preferred within this province, a justice for any county in which any person charged with having committed or being suspected to have committed any such offence shall be or be suspected to be, may issue his warrant (E.) to apprehend such person, to be dealt with as therein and thereby directed.

When an indictment is found and the party hath not appeared, manner of proceeding.

3. Where an indictment shall be found by the grand jury against a person then at large, whether such person shall have been bound by recognizance to appear to answer the same or not, the person acting as clerk of the court where the indictment shall be found shall at any time afterwards after the end of the same term or sittings, upon application of the prosecutor or any person on his behalf, and on payment of twenty cents, if such person shall not have already appeared and pleaded to such indictment, grant unto such prosecutor or person a certificate (F.), which being produced to a justice of the county where the offence shall in such indictment be alleged to have been committed or in which the person indicted shall be suspected to be, such justice shall issue his warrant (G.) to apprehend the party so indicted; upon the party being apprehended and being proved to be on oath the same person charged in the indictment, the justice before whom he is brought shall, without further inquiry or examination, by warrant (H.) commit him for trial or admit him to bail as hereinafter mentioned. If the person indicted shall then be confined in jail for any other offence, then the justice,

upon it being proved before him upon oath that the person indicted and the person so confined are the same person, shall issue his warrant (I.) directed to the keeper of such jail, commanding him to detain such person in custody until discharged therefrom by due course of law. CHAP. 172.

4. A justice of the peace may grant or issue any such warrant or any search warrant on a Sunday as well as on any other day. Warrants may issue on a Sunday.

5. Whenever a charge or complaint for any indictable offence shall be made before a justice, if it be intended to issue a warrant in the first instance against the party charged, an information and complaint thereof (A.) in writing on the oath of the informant or of some witness in that behalf shall be laid before the justice; but where it is intended to issue a summons in the first instance, the information and complaint need not be in writing, nor upon oath, but may be by parol, and no objection shall be taken or allowed to any such information or complaint for any alleged defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice who shall take the examination of the witnesses in that behalf. When a warrant shall issue for an indictable offence, information must be in writing under oath; otherwise when a summons shall issue; variances unobjectionable.

6. Upon such information and complaint being so laid, the justice receiving the same may, if he shall think fit, issue his summons or warrant respectively, as hereinbefore directed, to cause the party charged to appear as therein and thereby directed; and every such summons (C.) shall be directed to the party so charged in and by such information, and shall shortly state the matter of such information, and shall require the party to whom directed to appear at a certain time and place therein mentioned, to answer to such charge; and such summons shall be served by a constable or other peace officer upon the person to whom directed, by delivering the same to the party personally, or if he cannot conveniently be met with then by leaving the same with some person for him at his last or usual place of abode; and the person who shall have served the same shall attend at the time and place, and before the justice in the summons mentioned, if necessary, to verify such service upon oath; and if the party summoned shall not appear as required, the justice shall issue his warrant (D.) to compel his attendance as therein and thereby prescribed. If any variance or alleged defect in substance or in form between the summons or warrant, and the evidence adduced in support thereof shall appear to the justice to be such that the party charged has been deceived or misled thereby, such justice, at the request of the party charged, may adjourn the hearing of the case to a future day, and remand such party or admit him to bail, as hereinafter mentioned. Proceedings by summons and warrant; variances may be cause for adjournment.

7. It shall not be necessary to make a warrant (B.) returnable at any particular time, but it may remain in force Warrant need not be returnable at any par-

CHAP. 172. until it shall be executed. It may be executed by apprehending the offender at any place within which the justice issuing it hath jurisdiction, or in case of fresh pursuit at any place in the next adjoining county or place and within seven miles of the border of such first mentioned county, without having such warrant backed, as hereinafter mentioned.

particular time,
how and where
executed on
fresh pursuit.

Variances.

No objection shall be taken or allowed to any such warrant for any defect therein in substance or in form, or for any variance between it and the evidence adduced on the part of the prosecution before the justice who shall take the examination of the witnesses in that behalf, as hereinafter mentioned; but if it appear to the justice that the party charged has been deceived or misled by any such variance, at his request the justice may adjourn the hearing of the case to a future day, and in the meantime remand the party charged or admit him to bail, as hereinafter mentioned.

Warrants, how
endorsed; pro-
ceedings there-
on when the
prosecutor or
any of the wit-
nesses shall re-
side in the
county where
the prisoner is
apprehended.

8. If the person against whom any such warrant shall be issued shall not be found within the jurisdiction of the justice issuing the same, or if he shall be or be suspected to be in any place within this province, a justice of the county or place where such person shall be or be suspected to be, upon proof made upon oath of the handwriting of the justice issuing the warrant, may make an endorsement (K.) upon such warrant, signed with his name, authorizing the execution thereof as thereon endorsed, and the carrying of the person therein named, when apprehended, before the justice who first issued the warrant, or some other justice of that county or place where the offence mentioned in the warrant appears therein to have been committed; but if the prosecutor or any of the witnesses for the prosecution shall then be in the county or place where the person shall have been so apprehended, the party apprehending him, if so directed by the justice backing the warrant, shall convey him before such last mentioned justice or some other justice of the same county or place, and thereupon such justice may take the examination of such prosecutor or witnesses, and proceed in every respect in manner hereinafter directed with respect to persons charged before a justice with an offence alleged to have been committed in another county or place than that in which such person has been apprehended.

Evidence for
the prosecution
how secured.

9. If it shall be made to appear to any justice by oath that any person within his jurisdiction is likely to give material evidence for the prosecution and will not voluntarily appear for the purpose of being examined, such justice shall issue his summons (L. 1) to such person, requiring him to appear at the time and place therein mentioned, to testify as therein directed. If without sufficient excuse he neglect to appear at such time and place after proof upon oath of such summons having been served upon such

person either personally or by leaving the same with some person for him at his last or usual place of abode, the justice before whom such person should have appeared may issue a warrant, (L. 2) which warrant, if necessary, may be backed as other warrants. If such justice shall be satisfied by evidence upon oath that it is probable that such person will not attend to give evidence unless compelled, then, instead of a summons, he may issue a warrant (L. 3) in the first instance, which, if necessary, may be backed as above. If on the appearance of such person, either in obedience to the summons or under the warrant, he shall refuse to be examined upon oath concerning the premises, or shall refuse to take such oath, or having taken such oath shall refuse to answer questions concerning the premises without just excuse for such refusal, the justice by warrant (L. 4) may commit such party so refusing to jail, for any time not exceeding seven days, unless he shall in the meantime consent to be examined and to answer.

10. Whenever any person shall appear or be brought before a justice charged with an indictable offence, whether committed within the province or upon the high seas, or on land beyond the sea, whether such person appear voluntarily or be in custody for the same or another offence, the justice, before he commit the accused person for trial or admit him to bail, shall in the presence of the accused person, who shall be at liberty to put questions to any witness produced against him, take the statement (M.) on oath of those who shall know the facts and circumstances of the case, and shall put the same into writing, and such depositions shall be read over to and signed respectively by the witnesses so examined, and shall also be signed by the justices taking the same. Before any such witness shall be examined the justice shall administer the usual oath; and if upon the trial of the person accused it shall be proved upon oath that any person whose deposition shall have been so taken is dead, or so ill as to be unable to travel, and also that such deposition was taken in the presence of the person accused, and that he, or his council or attorney, had full opportunity of cross examining the witness, then if such deposition purport to be signed by the justice by or before whom the same purports to have been taken, it may be read in evidence on such prosecution without further proof, unless it shall be proved that such deposition was not in fact signed by the justice purporting to sign the same.

11. After the examination of all the witnesses on the part of the prosecution shall have been completed, the justice shall, without requiring the attendance of the witnesses, read or cause to be read to the accused, the depositions taken against him, and shall say to him these words, or to the like effect:

Proceedings before a justice where a party is charged with an indictable offence; dispositions how taken and when to be used on trial.

Depositions to be read; party to be cautioned, and questioned; his answers, if any to be reduced to writing, and may be used on trial.

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“Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence against you upon your trial.”

And whatever the prisoner shall then say in answer thereto shall be taken down in writing (N.) and read over to him, and shall be signed by the justice and kept with the depositions of the witnesses, and shall be transmitted with them as hereinafter mentioned, and upon the trial of the accused party the same may if necessary be given in evidence against him without further proof thereof, unless it shall be proved that the justice purporting to sign the same did not in fact sign the same; but before such accused person shall make any statement, the justice shall state to him, and give him clearly to understand, that he has nothing to hope from any promise of favor and nothing to fear from any threat which may have been holden out to him to induce him to make any admission or confession of his guilt, but that whatever he shall then say may be given in evidence against him upon his trial. The prosecutor may, however, give in evidence any admission or confession or other statement of the person accused or charged, made at any time which by law would be admissible evidence against such person.

Room where examinations are taken not necessarily an open court.

12. The room or building in which the justice shall take such examinations or statements as above shall not be deemed an open court for that purpose, and the justice at his discretion may order that no person shall have access to, or be or remain in such room or building without the consent of such justice, if it appear to him that the ends of justice will be best answered by so doing.

Recognizance of prosecutor and witness how taken; papers how and where returned

13. The justice before whom any witness shall be examined may bind by recognizance (O. 1) the prosecutor and every such witness to appear at the next term or sitting of the court in which the accused is to be tried, then and there to prosecute, or to prosecute and give evidence, or to give evidence, as the case may be, against the party accused, which recognizance shall specify the profession, mystery, art, or trade of every such person recognized, together with his christian and surname, and the place of his residence, and being duly acknowledged it shall be subscribed by the justice before whom taken, and a notice (O. 2) thereof shall at the same time be given to the person bound thereby: and the several recognizances so taken, together with the written information, if any, the depositions, the statement of the accused, and the recognizance of bail, if any in such case, shall be delivered by the justice to the proper officer of the court in which the trial is to be had, before or at the opening of the court on the first day of term, or at such other time as the presiding judge there-

of shall order. If such witness shall refuse to enter into such recognizance the justice by his warrant (P. 1) may commit him to jail in the county where the trial is to be had until after the trial of the accused party, unless in the meantime he shall enter into such recognizance before some justice of the county where such jail is situate. If afterwards for want of sufficient evidence in that behalf, or other cause, the justice before whom such accused party shall have been brought shall not commit him or hold him to bail for the offence with which he shall have been charged, the same or any other justice of the county by his order (P. 2) may direct the keeper of such jail to discharge him from further custody, and such keeper shall forthwith discharge him accordingly.

14. If from the absence of witnesses, or for any other reasonable cause, it shall become necessary or advisable to defer the examination or further examination of any witnesses for any time, the justice before whom the accused party shall appear or be brought may by his warrant (Q. 1) from time to time remand the party accused for such time as to him shall seem reasonable, not to exceed eight clear days, to jail or other place of security in the county. If the remand be for a period not exceeding three clear days the order therefor may be made verbally to a constable or person to be named by the justice in that behalf, with directions to bring up the accused party again at a time and place appointed for continuing the examination. But any justice may order the accused party to be brought before him or any other justice for the same county or place before the expiration of the time for which the accused shall be so remanded, and the jailer or officer in charge shall obey such order, and any justice before whom the accused shall so appear or be brought, may discharge him upon his entering into a recognizance (Q. 2, 3) with or without a security or securities, at the discretion of the justices, conditioned for his appearance at the time and place appointed for the continuance of such examination. If he shall not appear, then such justice or any other justice present, upon certifying (Q. 4) upon the back of the recognizance, may transmit such recognizance to the prothonotary of the court of the county within which such recognizance shall have been taken, to be proceeded upon as other recognizances, and such certificate shall be *prima facie* evidence of the non-appearance of such accused party.

15. Whenever a person shall appear or be brought before a justice charged with an offence alleged to have been committed within a county or place wherein such justice shall not have jurisdiction, he shall examine such witnesses and receive such proof of the charge as shall be brought before him, and if in the opinion of such justice the evi-

Party may be remanded for further examinations; orders therefor; recognizance for his appearance, and how forfeited.

Proceedings when the offence charged has been committed in a county where the justice has not jurisdiction.

CHAP. 172. dence adduced shall be sufficient proof of the charge made against the accused party, the justice shall thereupon commit him to jail, or shall admit him to bail as hereinafter mentioned, and shall bind over the prosecutor if he have appeared before him, and the witnesses, by recognizance accordingly as hereinbefore mentioned. But if the evidence shall not in the opinion of such justice be sufficient to put the accused party upon his trial for the offence, with which he is charged, the justice shall bind over such witnesses as he shall have examined by recognizance to give evidence as hereinbefore mentioned, and he shall issue his warrant (R. 1) in that behalf, and at the same time deliver the information and complaint, and the depositions and recognizances taken by him, to the constable having the execution of the last named warrant, to be by him delivered to the justice before whom he shall take the accused, and the depositions and recognizances shall have the same validity and effect as if taken before such last mentioned justice; and they, with such depositions and recognizances as the last mentioned justice shall take in the matter, shall be transmitted to the court where the accused party is to be tried, if he shall be committed for trial or admitted to bail.

Proceedings before the justice having jurisdiction in the place where the offence was committed: expenses of officer how taxed and defrayed.

16. If the accused party shall be taken before the justice last mentioned by virtue of such last named warrant, the person so conveying him shall be entitled to be paid his costs and expenses for that service, and upon his producing the accused party before such justice, and delivering him into custody as such justice shall direct, and delivering his warrant, the information, if any, deposition and recognizances, and proving by oath the hand-writing of the justice subscribing the same, such justice to whom the accused party is produced shall forthwith ascertain the sum which ought to be paid for such service, and for his reasonable costs and expenses of returning, and shall thereupon make an order (R. 2) in favor of such person upon the county treasurer for payment thereof, and the treasurer upon production of the order shall pay the same in the usual course. If the justice last named shall not think the evidence against such accused party sufficient to put him upon trial, he shall discharge him without bail, and the recognizances taken by such first named justice shall be void.

Justices may take bail for all offences, treason and felony punishable with death excepted.

17. Where a person shall appear or be brought before a justice, charged with any offence other than treason, or a felony punishable with death, he may in his discretion admit such person to bail upon such surety or sureties as he shall think sufficient to ensure the appearance of the person accused at the time and place for the trial of such offence, and he shall take the recognizance (S. 1), and notice thereof (S. 2) shall be given.

18. In all cases where a person charged with an indictable offence shall be committed for trial, the justice who shall have signed the warrant for his commitment, may at any time before trial, at his discretion, admit such accused party to bail as above if he shall be of opinion that such accused party ought to be admitted to bail, he shall in such case certify (S. 3) on the back of the warrant of commitment his consent to such party being bailed, stating the amount of bail which ought to be required, and thereupon any justice attending, or being at the jail where such accused party shall be in custody, on production of such certificate shall admit him to bail in manner above mentioned, or if it shall be inconvenient for the surety or sureties in such case to attend at such jail to join with the accused person in the recognizance the committing justice may make a duplicate of such certificate (S. 4), and upon the same being produced to any justice for the same county or place he may make the recognizance of the surety or sureties in conformity therewith.

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Parties, how admitted to bail after commitment.

19. Upon such recognizances being transmitted to the keeper of such jail, and produced, together with the certificate on the warrant of commitment, to a justice attending or being at the jail, he may thereupon take the recognizance of the accused party and order him to be discharged out of custody as to that commitment as herein-after mentioned.

Same subject.

20. In all cases where an accused party in custody shall be admitted to bail by a justice other than the committing justice, such justice so admitting him to bail shall forthwith transmit the recognizance of bail to the proper officer or to the committing justice, to be transmitted by him, with the examinations, to such officer. But no justice of the peace shall admit any person to bail for treason, or a felony punishable with death; nor shall such person be admitted to bail except by the supreme court, or by one of the justices thereof.

Recognizance how transmitted to the proper officer; treason and felonies punishable with death bailable only by the supreme court or a judge.

21. In all cases where a justice shall admit to bail a person who shall then be in prison charged with the offence for which he shall be so admitted to bail, such justice shall send to or cause to be lodged with the jailer a warrant of deliverance (S. 5), and thereupon such jailer shall obey the same.

Warrants of deliverance to issue where a party bailed from prison.

22. When all the evidence offered upon the part of the prosecution shall have been heard, if the justice shall be of opinion that it is insufficient to put the accused party upon his trial for any indictable offence, he shall forthwith order such accused party, if in custody, to be discharged as to the information then under inquiry; but if he shall think the evidence sufficient to put the accused party upon his trial for an indictable offence, or if the evidence given raise a strong or probable presumption of the guilt of the

If the evidence is insufficient the party shall be discharged, otherwise he shall be committed or admitted to bail.

CHAP. 172. accused party, then the justice shall by his warrant (T. 1) commit him to jail until he shall be delivered by due course of law, or admit him to bail as hereinbefore mentioned.

Jailer to give the constable a receipt for the prisoner, setting forth his state and condition.

23. The constable or person to whom the warrant of commitment shall be directed shall convey the person accused to jail as therein directed, and there deliver him together with such warrant to the jailer, who shall thereupon give a receipt (T. 2) for such prisoner, setting forth the state and condition in which such prisoner was when he was so delivered into custody.

Forms furnished in the schedule annexed.

24. The several forms in the schedule to this chapter contained, or forms to the same effect, shall be valid.

SCHEDULE.

(A.)

Information and complaint for an indictable offence.

County of ———, }
to wit:

The information and complaint of C. D., of ———, [*yeoman*,] taken this ——— day of ———, A. D. 18—, before the undersigned, who saith that [*&c., stating the offence.*]

Sworn before me, the day and year first above mentioned, at ———.

J. S., J. P.

(B.)

Warrant to apprehend a person charged with an indictable offence.

To any constable or peace officer of the county of ———:

Whereas A. B., of ———, [*laborer*,] hath this day been charged upon oath before the undersigned, for that he on the ——— day of ———, at ———, did [*&c. stating shortly the offence:*] These are therefore to command you forthwith to apprehend the said A. B., and to bring him before me or some other of her majesty's justices of the peace in and for the said county, to answer such charge, and to be further dealt with according to law.

Given under my hand and seal at ———, this ——— day of ———, A. D. 18—.

J. S., J. P. (seal.)

(C.)

Summons to a person charged with an indictable offence.

To A. B., of ——— [*laborer:*]

Whereas you have this day been charged before the undersigned for that you on the ——— day of ——— [*&c. stating*

the nature of the offence:] These are therefore to command CHAP. 172.
 you to appear before me on the — day of —, at —
 o'clock in the — noon, at —, or before some other
 justice or justices of the peace as may then be there, to
 answer such charge, and to be further dealt with accord-
 ing to law. Herein fail not.

Given under my hand and seal at —, this — day
 of — A. D. 18—.

J. S., J. P. (seal.)

(D.)

Warrant where the summons is disobeyed.

To any constable or other peace officer of the county of
 —:

Whereas on the — day of —, last past, A. B., of
 —, [*laborer,*] was charged before the undersigned for that
 [*&c. as in summons:*] and whereas I then issued my sum-
 mons to the said A. B., commanding him to appear before
 me on the — day of —, at — o'clock in the —
 noon, at —, or before such other justice or justices of
 the peace as might then be there, to answer such a charge,
 and to be further dealt with according to law; and whereas
 the said A. B. hath neglected to appear at the time and
 place appointed by such summons, although it hath now
 been proved to me upon oath that such summons has been
 duly served upon the said A. B.: These are therefore to
 command you forthwith to apprehend the said A. B. and
 bring him before me or some other justice of the peace, to
 answer such charge, and to be further dealt with according
 to law. Herein fail not.

Given under my hand and seal at —, this — day
 of —, A. D. 18—

J. S., J. P. (seal.)

(E.)

*Warrant to apprehend a person charged with an indictable offence
 committed on the high seas or abroad.*

*For offences committed on the high seas the warrant may be the
 same as in ordinary cases, but describing the offence to have been
 committed “on the high seas, out of the body of any county
 of this province, and within the jurisdiction of the admi-
 ralty of England.”*

*For offences committed abroad for which the parties may be
 indicted in this province, the warrant also may be the same as in
 ordinary cases, but describing the offence to have been committed
 “on land out of the province, to wit: at —, in the
 kingdom of —, or “at —, in the island of —,
 in the West Indies,” or “at —, in the East Indies,”
 or as the case may be.*

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(F.)

Certificate of indictment being found.

I hereby certify that at a court of oyer and terminer and general jail delivery, [*or a court of general sessions of the peace,*] holden in and for the county of ———, at ———, in ———, a bill of indictment was found by the grand jury against A. B. therein described as A. B. late of ———, [*laborer,*] for that he [*&c., stating shortly the offence,*] and that the said A. B. hath not appeared and pleaded to the said indictment.

Dated this ——— day of ———, 18—.

J. D.

Clerk [*or deputy clerk*] of the crown, [*or clerk of the peace.*]

(G.)

Warrant to apprehend a person indicted.

To any constable or peace officer of the county of ———:

Whereas it hath been duly certified by J. D., clerk [*or deputy clerk*] of the crown [*or clerk of the peace*] that [*&c. stating the certificate:*] These are therefore to command you forthwith to apprehend the said A. B. and to bring him before me or some other justice or justices of the peace, to be dealt with according to law.

Given under my hand and seal at ———, this ——— day of ———, A. D. 18—.

J. S., J. P. (seal.)

(H.)

Warrant of commitment of a person indicted.

To any constable of ———, and to the keeper of the jail of the county of ———:

Whereas, by warrant under my hand and seal, dated the ——— day of ———, after reciting that it had been certified by J. D. [*&c. as in the certificate,*] I commanded the constables and all other peace officers of the said county, forthwith to apprehend the said A. B. and bring him before me the undersigned, or before some other justice or justices of the peace, to be dealt with according to law: and whereas the said A. B. has been apprehended under such warrant, and being now brought before me, it is proved upon oath that the said A. B. is the same person who is named and charged in and by the said indictment: These are therefore to command you the said constable, forthwith to take and safely convey the said A. B. to the jail at ———, in the said county, and there to deliver him to the keeper thereof, together with this warrant; and I hereby command you the

said keeper to receive the said A. B. into your custody in the said jail, and him there safely to keep until he shall be thence delivered by due course of law. CHAP. 172.

Given under my hand and seal, at ———, this — day of ———, A. D. 18—.

J. S., J. P. (seal.)

(I.)

Warrant to detain a person indicted who is already in custody for another offence.

To the keeper of the jail at ———, in the county of ——— :

Whereas it hath been duly certified by J. D., clerk [*or deputy clerk*] of the crown [*or clerk of peace*] for the county of ———, [*&c. stating the certificate :*] And whereas I am informed that the said A. B. is in your custody in the said jail at ———, aforesaid, charged with some offence or other matter; and it being now proved upon oath before me that the said A. B. so indicted and the said A. B. so in your custody, are one and the same person: these are therefore to command you to detain the said A. B. in your custody in the jail aforesaid, until by writ of habeas corpus he shall be removed therefrom for the purpose of being tried upon the said indictment, or until he shall be otherwise removed or discharged out of your custody by due course of law.

Given under my hand and seal at ——— this — day of ———, A. D. 18—.

J. S., J. P. (seal.)

(K.)

Endorsement in backing a warrant.

County of ———, }
to wit: }

Whereas proof upon oath hath this day been made before me, a justice of the peace for the said county of ———, that the name of J. S. to the within warrant subscribed is the hand writing of the justice of the peace within mentioned, I do therefore hereby authorize W. T., who bringeth to me this warrant, and all other persons to whom the same was originally directed, or by whom it may be lawfully executed, and also all constables and other peace officers of the said county to execute the same within the last mentioned county,* and to bring the said A. B., if apprehended within the same county, before me, or before some other justice or justices of the peace of the same county, to be dealt with according to law.

Given under my hand this — day of ———, 18—.

J. S., J. P.

* The words following the asterisk are to be used only where the justice backing the warrant shall think fit.

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(L. 1.)

*Summons to a witness.*To E. F., of ———, [*laborer.*]

Whereas information hath been laid before the undersigned that A. B. [*&c. as in the summons or warrant against the accused*] and it hath been made to appear to me upon oath that you are likely to give material evidence for the prosecution, these are therefore to require you to appear before me on the ——— day of ——— next, at — o'clock in the ———noon, at ———, or before such other justice or justices of the peace as may then be there, to testify what you shall know concerning the said charge so made against the said A. B. as aforesaid. Herein fail not.

Given under my hand and seal at ———, this ——— day of ———, A. D. 18—.

J. S., J. P. (seal.)

(L. 2.)

Warrant where a witness has not obeyed a summons.

To any constable or other peace officer of the county of ———:

Whereas information having been laid before the undersigned that A. B. [*&c. as in summons*] and it having been made to appear to me upon oath that E. F., of ———, [*laborer,*] was likely to give material evidence for the prosecution, I did issue my summons to the said E. F., requiring him to appear before me at ———, on the ——— day of ———, or before such other justice or justices of the peace as might then be there, to testify what he should know respecting the said charge against the said A. B.; and whereas proof hath this day been made before me, upon oath, of such summons having been served upon the said E. F., and whereas the said E. F. hath neglected to appear at the time and place appointed by the said summons, and no just excuse has been offered for such neglect: these are therefore to command you to bring the said E. F. before me at ——— on the ——— day of ———, at — o'clock in the ———noon, or before such other justice or justices of the peace as may then be there, to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal at ———, this ——— day of ———, A. D. 18—.

J. S., J. P. (seal.)

(L. 3.)

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Warrant for a witness in the first instance.

To any constable or other peace officer of the county of ——— :

Whereas information hath been laid before the undersigned that [*&c. as in summons,*] and it having been made to appear to me upon oath that E. F. of ——— [*laborer*] is likely to give material evidence for the prosecution, and that it is probable that the said E. F. will not attend to give evidence without being compelled so to do; these are therefore to command you to bring the said E. F. before me at ———, on the ——— day of ———, at ——— o'clock in the ——— noon, or before such other justice or justices of the peace as may then be there to testify what he shall know concerning the said charge so made against the said A. B. as aforesaid.

Given under my hand and seal, at ———, this ——— day of ———, A. D. 18—

J. S., J. P. (seal.)

(L. 4.)

Warrant of commitment of a witness for refusing to be sworn or to give evidence.

To any constable of ———, and to the keeper of the jail at ———, in the county of ———.

Whereas A. B. was lately charged before the undersigned for that [*&c. as in the summons*] and it having been made to appear to me upon oath that E. F. of ——— was likely to give material evidence for the prosecution, I duly issued my summons to the said E. F. requiring him to appear before me at ——— on the ——— day of ———, or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge; and the said E. F. now appearing before me [*or being brought before me by virtue of a warrant in that behalf to testify as aforesaid*] and being required to make oath or affirmation as a witness in that behalf hath now refused so to do [*or being duly sworn as a witness doth now refuse to answer certain questions concerning the premises which are here put to him*] without offering any just excuse for such his refusal: these are therefore to command you the said constable to take the said E. F. and him safely convey to the jail at ———, in the county aforesaid, and there deliver him to the keeper thereof, together with this warrant; and I do hereby command you the said keeper of the said jail to receive the said E. F. into your custody in the said jail, and him there safely keep for the space of ——— days, for

CHAP. 172. his said contempt, unless he shall in the meantime consent to be examined and to answer concerning the premises, and for so doing this shall be your sufficient warrant.

Given under my hand and seal, at ———, this ——— day of ——— A. D. 18—.

J. S., J. P. (seal.)

(M.)

Depositions of witnesses.

County of ———, }
to wit:

The examination of C. D. of ——— [*farmer,*] and E. F. of ———, [*laborer,*] taken on oath this ——— day of ———, A. D. 18—, at ———, in the county aforesaid, before the undersigned, in the presence and hearing of A. B., who is charged this day before me, for that he the said A. B. at ———, on the ——— day of ———, [*&c. describing the offence as in a warrant of commitment.*]

This deponent, C. D. on his oath saith as follows: [*&c. stating the deposition of the witness as nearly as possible in the words he uses. When his deposition is complete let him sign it.*]

And this deponent, E. F. upon his oath, saith as follows: [*&c.*]

The above depositions of C. D. and E. F. were taken and sworn before me at ———, on the day and year first above mentioned.

J. S., J. P.

(N.)

Statement of the accused.

A. B. stands charged before the undersigned, one of her majesty's justices of the peace for the county of ———, this ——— day of ——— A. D. 18—, for that he the said A. B. at ———, on the ——— day of ———, [*&c. as in the caption of the depositions;*] and the said charge being read to the said A. B., and the witnesses for the prosecution, C. D. and E. F. being severally examined in his presence, the said A. B. is now addressed by me as follows: "Having heard the evidence do you wish to say anything in answer to the charge? You are not obliged to say any thing unless you desire to do so; but whatever you say will be taken down in writing; and may be given in evidence against you upon your trial," whereupon the said A. B. saith as follows:

[*Here state whatever the prisoner may say, and in his very words, as nearly as possible,—get him to sign it if he will.*]

A. B.

Taken before me at ———, on the day and year first above mentioned.

J. S., J. P.

* (O. 1.)

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Recognizance to prosecute or give evidence.

County of _____, }
to wit: }

Be it remembered that on the _____ day of _____, A. D. 18—, C. D. of _____, in the said county, [*farmer*] personally came before me, a justice of the peace for the said county, and acknowledged himself to owe to our sovereign lady the queen, the sum of _____ dollars, to be levied of his goods and lands, to the use of our said lady the queen, her heirs and successors, if he the said C. D. shall fail in the condition hereof.

Taken and acknowledged the day and year first above mentioned, at _____, before me.

J. S., J. P.

Condition to prosecute.

The condition of this recognizance is such, that whereas one A. B. was this day charged before me, J. S., a justice of the peace for that [*&c., as in the caption of the depositions.*] If, therefore, he the said C. D. shall appear at the next court of oyer and terminer or general jail delivery, [*or at the next court of general sessions of the peace,*] to be holden in and for the county of _____,* and there prefer, or cause to be preferred, a bill of indictment for the offence aforesaid against the said A. B., and there also duly prosecute such indictment, then the said recognizance to be void.

Condition to prosecute and give evidence.

Same as in the last form to the asterisk (), and then thus:* “and there prefer, or cause to be preferred, a bill of indictment against the said A. B. for the offence aforesaid, and duly prosecute such indictment and give evidence thereon, as well to the jurors who shall then inquire of the said offence as also to those who shall pass upon the trial of the said A. B., then the said recognizance to be void.”

Condition to give evidence.

Same as in the last form but one to the asterisk (), and then thus:* “and there give such evidence as he knoweth upon a bill of indictment to be then and there preferred against the said A. B. for the offence aforesaid, as well to the jurors who shall there inquire of the said offence as also to the jurors who shall pass upon the trial of the said A. B., then the said recognizance to be void.”

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(O. 2.)

Notice of the recognizance to be given to the prosecutor and his witnesses.

County of ——— }
to wit: }

Take notice that you, C. D., of ———, are bound to appear at the next court [*where the offence is to be tried*] to be holden at ———, in the said county, and then and there [*prosecute and*] give evidence against A. B.; and unless you then appear there and [*prosecute and*] give evidence accordingly, the recognizance entered into by you will be forthwith levied on you. Dated this ——— day of ———, A. D. 18—.

J. S., J. P.

(P. 1.)

Commitment of a witness for refusing to enter into the recognizance.

To any constable of ———, and to the keeper of the jail at ———, in the county of ———:

Whereas A. B. was lately charged before the undersigned for that [*&c., as in the summons to the witness,*] and it having been made to appear to me upon oath that E. F. of ——— was likely to give material evidence for the prosecution, I duly issued my summons to the said E. F., requiring him to appear before me at ———, on the ——— day of ———, or before such other justice or justices of the peace as should then be there, to testify what he should know concerning the said charge made against the said A. B.; and the said E. F. now appearing before me [*or being brought before me by virtue of a warrant in that behalf*] to testify as aforesaid, hath been now examined by me touching the premises, but being required by me to enter into a recognizance conditioned to give evidence against the said A. B. hath now refused so to do; these are therefore to command you, the said constable, to take the said E. F., and him safely convey to the said jail at ———, in the county aforesaid, and there deliver him to the keeper thereof, together with this warrant; and I do hereby command you, the keeper of the said jail, to receive the said E. F. into your custody in the said jail, and safely keep him until after the trial of the said A. B. for the offence aforesaid, unless in the meantime he shall duly enter into such recognizance as aforesaid in the sum of ——— dollars, before some justice of the peace for the said county, conditioned in the usual form to appear at the next court of [*oyer and terminer or general jail delivery, or general sessions of the peace*] to be holden in and for the county of ———, and there to give evidence before the

grand jury upon any bill of indictment which may then CHAP. 172.
and there be preferred against the said A. B. for the
offence aforesaid, and also to give evidence upon the trial
of the said A. B. for the said offence, if a true bill should
be found against him for the same.

Given under my hand and seal at ———, this ——— day
of ———, A. D. 18—.

J. S., J. P. (seal.)

(P. 2.)

Subsequent order to discharge the witness.

To the keeper of the jail at ———, in the county of ——— :

Whereas by my order, dated the ——— day of ———, A.
D. 18—, reciting that A. B. was lately charged before me
for a certain offence therein mentioned, and that E. F.
having appeared before me and being examined as a witness
for the prosecution in that behalf, refused to enter into a
recognizance to give evidence against the said A. B., and
I therefore committed the said E. F. to your custody, and
required you to safely keep him until after the trial of the
said A. B. for the offence aforesaid, unless in the mean-
time he should enter into such recognizance as aforesaid ;
and whereas for want of sufficient evidence against the
said A. B. he has not been committed or holden to bail for
the said offence, but on the contrary thereof has since
been discharged, and it is therefore not necessary that the
said E. F. should be detained longer in your custody :
These are therefore to order and direct you the said keeper
to discharge the said E. F. out of your custody as to the
said commitment, and suffer him to go at large.

Given under my hand and seal at ———, this ——— day
of ———, A. D. 18—.

J. S., J. P. (seal.)

(Q. 1.)

Warrant remanding a prisoner.

To any constable of ———, and to the keeper of the jail
at ———, in the county of ——— :

Whereas A. B. was this day charged before the under-
signed for that [*ſc. as in the warrant to apprehend,*] and it
appears to me to be necessary to remand the said A. B. :
these are therefore to command you the said constable
forthwith to convey the said A. B. to the jail at ———, in
the said county, and there to deliver him to the keeper
thereof, together with this warrant : and I hereby com-
mand you the said keeper to receive the said A. B. into
your custody in the said jail, and there safely keep him

CHAP. 172. until the — day of —, instant, when I hereby command you to have him at —, at — o'clock in the —noon of the same day before me, or before such other justice or justices of the peace as may then be there, to answer further to the said charge, and to be further dealt with according to law, unless you shall be otherwise ordered in the meantime.

Given under my hand and seal at —, this — day of —, A. D. 18—.

J. S., J. P. (seal.)

(Q. 2.)

Recognizance of bail instead of remand on an adjournment of examination.

County of —, }
to wit: }

Be it remembered that on the — day of —, A. D. 18—, A. B. of —, [*laborer,*] L. M. of —, [*grocer,*] and N. O. of —, [*butcher,*] personally came before me and severally acknowledged themselves to owe to our lady the queen the several sums following, that is to say: the said A. B. the sum of —, and the said L. M. and N. O. the sum of — each, to be levied of their several goods and lands respectively to the use of our said lady the queen, her heirs and successors, if he the said A. B. fail in the condition hereof.

Taken and acknowledged the day and year first above mentioned, at —, before me.

J. S., J. P.

Condition.

The condition of this recognizance is such, that whereas the said A. B. was this day, [*or on the — day of —, last past,*] charged before me for that [*&c. as in the warrant*]; and whereas the examination of the witnesses for the prosecution in this behalf is adjourned until the — day of —, A. D. 18—, if therefore the said A. B. shall appear before me on the said — day of —, at — o'clock in the —noon, or before such other justice or justices of the peace as may then be there, to answer further to the said charge, and to be further dealt with according to law, then the said recognizance to be void.

(Q. 3.)

Notice of recognizance to be given to the accused and his sureties.

Take notice that you A. B., of —, are bound in the

sum of —, and your sureties L. M. and N. O., in the sum of — each, that you A. B. appear before me J. S., at —, on — the — day of —, A. D., 18—, at — o'clock in the — noon, or before such other justice or justices of the peace as may then be there, to answer further to the charge made against you by C. D., and to be further dealt with according to law; and unless you A. B. personally appear accordingly, the recognizances entered into by yourself and sureties, will be forthwith levied on you and them. Dated this — day of — A. D., 18—. J. S., J. P.

(Q. 4.)

Certificate of non-appearance to be endorsed on the recognizance.

I hereby certify that the said A. B. hath not appeared at the time and place in the above condition mentioned, but therein hath made default by reason whereof the within written recognizance is forfeited.

J. S., J. P.

(R. 1.)

Warrant to convey the accused before a justice of the county, &c. in which the offence was committed.

To any constable or peace officer of the county of —:

Whereas A. B. of —, [*laborer,*] hath this day been charged before the undersigned for that [*&c. as in the warrant to apprehend*]; and whereas I have taken the deposition of C. D., a witness examined by me in this behalf; but inasmuch as I am informed that the principal witnesses to prove the said offence against the said A. B. reside in the county of —, where the said offence is alleged to have been committed: these are therefore to command you forthwith to take and convey the said A. B. to the said county of —, and there carry him before some justice or justices of the peace in and for that county, and near where the offence is alleged to have been committed, to answer further to the said charge before him or them, and to be further dealt with according to law; and I hereby further command you to deliver to the said justice or justices the information in this behalf, and also the said deposition of C. D. now given into your possession for that purpose, together with this warrant.

Given under my hand and seal at —, this — day of —, A. D. 18—.

J. S., J. P. (seal.)

Order for payment of the constable's expenses.

To R. W., esquire, treasurer of the county of ——— :

Whereas W. T., constable of ———, in the county of ———, hath, in obedience to a certain warrant of J. S., esquire, a justice of the peace for the county of ———, taken and conveyed one A. B., charged before the said J. S. with having [*&c., stating shortly the offence,*] from ———, in the said county of ———, to ———, in the said county of ———, a distance of ——— miles, and produced the said A. B. before me, S. P., one of her majesty's justices of the peace in and for the county of ———, and delivered him into the custody of ——— by my direction to answer to the said charge, and further to be dealt with according to law ; and whereas the said W. T. hath also delivered to me the said warrant together with the information in that behalf, and also the deposition of C. D. in the said warrant mentioned, and hath proved to me upon oath the handwriting of the said J. S. subscribed to the same ; and whereas I have ascertained that the sum which ought to be paid to the said W. T. for conveying the said A. B. from the said county of to ——— the said county of ——— and taking him before me is the sum of ———, that the reasonable expenses of the said W. T. in returning will amount to the further sum of ———, making together the sum of ——— : These are therefore to order you as such treasurer of the said county of ———, to pay unto the said W. T. the said sum of ———, for which payment this order shall be your sufficient voucher and authority.

Given under my hand, this ——— day of ——— A. D. 18—.

S. P., J. P.

(S. 1.)

Recognizance of bail.

Be it remembered that on the ——— day of ———, A. D. 18—, A. B. of ———, [*laborer*], L. M. of ———, [*grocer*], and N. O. of ———, [*butcher*], personally came before me, the undersigned, a justice of the peace for the said county, and severally acknowledged themselves to owe to our lady the queen the several sums following, that is to say: the said A. B. the sum of ———, and the said L. M. and N. O. the sum of ——— each, to be levied of their several goods and lands respectively, to the use of our said lady the queen, her heirs and successors, if he the said A. B. fail in the condition hereof,

Taken and acknowledged the day and year first above mentioned, at ———, before me.

J. S., J. P.

Condition in ordinary cases.

CHAP. 172.

The condition of this recognizance is such, that whereas the said A. B. was this day charged before me, the justice therein mentioned, for that [*&c. as in the warrant*]; if therefore the said A. B. will appear at the next session of oyer and terminer and general jail delivery, [*or court of general sessions of the peace,*] to be holden in and for the county of ———, and there surrender himself into the custody of the keeper of the jail there, and plead to such indictment as may be found against him by the grand jury, in respect of such charge, and take his trial upon the same, and not depart the court without leave, then the said recognizance to be void.

(S. 2.)

Notice of the said recognizance to be given to the accused and his bail.

Take notice that you A. B. of ———, are bound in the sum of ———, and your sureties L. M. and N. O. in the sum of ——— each, that you A. B. appear, [*&c., as in the condition of the recognizance,*] and not depart the said court without leave; and unless you the said A. B. personally appear and plead, and take your trial accordingly, the recognizance entered into by you and your sureties shall be forthwith levied on you and them.

Dated this ——— day of ———, A. D. 18—.

J. S., J. P.

(S. 3.)

Certificate of consent to bail by the committing justice endorsed on the commitment.

I hereby certify that I consent to the within named A. B. being bailed by recognizance, himself in ——— and [*two*] sureties in ——— each.

J. S., J. P.

(S. 4.)

The like on a separate paper.

Whereas, A. B. was on the ——— day of ———, A. D. 18—, committed by me to the jail at ———, charged with [*naming the offence shortly.*] I hereby certify that I consent to the said A. B. being bailed by recognizance, himself in ——— and [*two*] sureties in ——— each. Dated this ——— day of ———, A. D. 18—.

J. S., J. P.

CHAP. 172.

(S. 5.)

Warrant of deliverance on bail being given for a prisoner already committed.

To the keeper of the jail at —, in the county of — :

Whereas, A. B. late of —, [*laborer,*] hath before me a justice of the peace for the said county, entered into his own recognizance, and found sufficient sureties for his appearance at the next court of oyer and terminer and general jail delivery, [*or court of general sessions of the peace,*] to be holden in and for the county of —, to answer our sovereign lady the queen, for that [*&c. as in the commitment,*] for which he was taken and committed to your said jail: these are therefore to command you, that if the said A. B. do remain in your custody in such jail for the said cause, and for no other, you shall forthwith suffer him to go at large.

Given under my hand and seal at —, this — day of —, A. D. 18—.

J. S., J. P. (seal.)

(T. 1.)

Warrant of commitment.

To any constable of —, and to the keeper of the jail at —, in the county of — :

Whereas A. B. was this day charged before me J. S., a justice of the peace in and for the said county, on the oath of C. D. of —, [*farmer,*] and others, for that [*&c. stating shortly the offence :*] These are therefore to command you the said constable to take the said A. B. and him safely convey to the said jail, and there deliver him to the keeper thereof, together with this warrant; and I do hereby command you the keeper of the said jail to receive the said A. B. into your custody in the said jail, and there safely keep him until delivered by due course of law.

Given under my hand and seal, at —, this — day of —, A. D. 18—.

J. S., J. P. (seal.)

(T. 2.)

Jailer's receipt to the constable for the prisoner, and justice's order thereon for payment of the constable's expenses in executing the commitment.

I hereby certify that I have received from W. T., constable of —, the body of A. B., together with a warrant under the hand and seal of J. S., esquire, a justice of the peace for the county of —, and that the said A. B. was [*sober, bruised, or as the case may be*] at the time he was so delivered into my custody.

P. K., jailer.

APPENDIX.

ACTS CONTINUED IN FORCE, NOTWITHSTANDING, AND AFTER THE PUBLICATION OF THE CONSOLIDATED STATUTES.

Chapter 8 of the Revised Statutes, (second series.)

OF SCRUTINIES.

1. When a scrutiny shall be persisted in, the sheriff shall attend at the appointed time and place with a clerk, and every candidate desiring to proceed in the scrutiny shall then, by himself or his agent, name a freeholder as sheriff's assistant. Sheriff's duty when scrutiny persisted in.
2. The sheriff and his assistants shall then take an oath in the following form: Oath of sheriff's assistant.
 "I, A. B., do swear that I will act impartially in the holding of this scrutiny."
- The oath to be administered to the sheriff by a justice of the peace, and to the assistants by the sheriff.
3. The clerk shall take an oath in the following form: Clerk's oath.
 "I, A. B., do swear that I will faithfully perform my duty at this scrutiny."
- The oath to be administered by the sheriff.
4. The sheriff and assistants, after the oaths have been administered, shall appoint a time and place for proceeding with the scrutiny; the time not to be less than three days, nor more than seven days thereafter. Appointment of time and place for scrutiny.
5. The sheriff and his assistants and clerk shall, at the time and place appointed, proceed with the scrutiny, and shall continue the same from day to day so long as any party shall tender service. Continuation of scrutiny.
6. The sheriff and his assistants shall determine upon the reception or rejection of evidence, and shall have each one voice therein, and where equally divided, the sheriff shall have an additional casting voice. Evidence, how received or rejected.
7. The clerk shall take down in writing and engross the evidence received, and shall minute and keep with the testimony, papers received. Duty of clerk.
8. No vote shall be scrutinized which shall not have been marked objected on the sheriff's poll book. Votes marked objected may be scrutinized.
9. The circumstance of an investigation having been had on the ground of a voter having been polled in a Votes polled in a wrong district

wrong district, or more than once, shall not prevent its being scrutinized on other grounds if marked objected.

Competency of witnesses, how sworn.
Of protests concerning evidence.

10. No person shall be a witness touching his own vote.

11. Witnesses shall be sworn by the sheriff.

12. Protests in writing may, at or before the close of the scrutiny, be filed on behalf of any candidate proceeding in the scrutiny in respect of the reception or rejection of evidence; such protests to set out specifically the evidence received or rejected, and the reasons for the dissatisfaction with the decision in reference thereto.

When deputy sheriff may hold scrutiny.

13. If the sheriff shall be unable personally to hold the scrutiny, the deputy sheriff, or other person specially deputed by the sheriff, shall hold the same in the manner, and with the rights, and subject to the provisions, as the sheriff if present.

If assistant shall not attend another to be appointed.

14. If a sheriff's assistant shall not attend throughout the scrutiny, another freeholder nominated on behalf of the candidate by whom the assistant shall have been chosen, shall be sworn, and act in his place in like manner.

If clerk shall not attend another to be appointed.

15. If the clerk shall, at any time, not attend, another shall be appointed by the sheriff in his place, and be sworn, and act in like manner, and have the same rights.

Sheriff to return proceedings to the assembly.

16. The sheriff shall return to the house of assembly the engrossed copy of evidence and proceedings held at the scrutiny, with a certificate annexed under his hand and the hand of his clerk, and also the original papers received at the scrutiny.

Sheriff's fees on scrutiny.

17. The sheriff shall be entitled to receive two dollars for every day he shall be actually engaged in holding the scrutiny from every candidate proceeding therein.

Clerk's fees by whom paid.

18. The clerk shall be entitled to receive ten cents per folio for the original minutes, and five cents per folio for the copy for the assembly; the amount to be paid in equal proportions by the candidates proceeding in the scrutiny.

Candidate entitled to copies of minutes.

19. Every candidate proceeding in the scrutiny shall be entitled to receive from the clerk a fair copy of the minutes, upon paying therefor five cents per folio.

Manner of recovering expenses where scrutiny abandoned.

20. If a candidate who demanded the scrutiny shall, after appointing his assistant, abandon the same, or, having gone through the scrutiny, shall not petition the house of assembly against the election, and enter into the requisite recognizance and proceed in the investigation, the opposing candidate at the scrutiny may, after demand made, recover from him, by action in the supreme court for money paid, the expenses incurred for sheriff's and clerk's fees at the scrutiny, and for the engrossing of papers and necessary attendance of witnesses thereat; the expenses to be first taxed, and the just amount thereof determined on proof on affidavit, by a judge of the supreme court after reasonable notice to the opposite party, according to the rates established in the supreme court.

21. If a sheriff shall wilfully be guilty of a violation of this chapter, he shall forfeit eight hundred dollars.

Penalty on the sheriff for misconduct.

This Chapter is repealed by Capl. sec. 3 of act of 1868

act Chapter 40 of the Revised Statutes, (second series.)

845. Capl. sec. 1. OF SHERIFFS. Chapter 32 of act of 1854 and Capl. 18. of act of 1860. are revived -

1. The chief justice, and a judge of the supreme court selected by him, or, in the absence of the chief justice, any two judges selected by the senior judge, together, in either case, with two members of the executive council, shall meet in Halifax during Michaelmas term in each year, and select three persons for sheriffs in each county, out of whom the governor in council shall prick one to serve for the ensuing year, who shall reside in his county, and who, upon giving security by bond as hereinafter mentioned, shall receive his commission and be invested with the powers of office.

Mode of selecting and pricking sheriffs; bonds given before commission.

2. A sheriff may receive his commission before his bond is approved in case the late sheriff has misconducted himself, or any of his sureties have become insolvent, or in case of the decease of a sheriff; but such new sheriff must find approved security within one month, to commence from the date of the commission.

Commission may issue before bonds given in certain cases.

3. If any person appointed shall refuse to accept the office he shall forfeit two hundred dollars, and the governor shall prick another from the list.

Fine for refusing to accept office.

4. The name of a person serving the year previous in any county may be again returned, unless a representation by a majority of the justices in session against him be filed in the supreme court in Halifax before Michaelmas term.

Sheriff re-eligible unless objected to by sessions.

5. If a sheriff die whilst in office his deputy shall act till another be appointed, and the sureties of the sheriff so dying shall be liable for such deputy as if the sheriff were living. If there be no deputy the governor in council may commission a sheriff for the remainder of the year, who shall file security as other sheriffs.

Death of sheriff provided against.

6. Every sheriff shall deposit in the provincial secretary's office a bond for the discharge of the duties of office, to be made to her majesty: himself in four thousand dollars, with two sureties each in two thousand dollars, and the bonds when approved shall be registered in the provincial secretary's office, on the oath of a subscribing witness. Where bonds are lost, certified copies shall be receivable in evidence.

Bonds, how given and registered.

Allowance of bonds; provisions in case of disallowance.

7. Such bonds when received by the provincial secretary shall forthwith be laid before the governor in council, who shall approve or disallow the same within twenty days. Any sheriff whose bond has been disallowed and not giving a satisfactory bond after reasonable notice, may be removed by the governor in council, and the sheriff for the preceding year shall remain in office, his sureties remaining liable. If he be the same person he shall act under his former appointment, and his former sureties shall continue until he find approved security or be removed from office.

Responsibilities of sureties, and substitution of others.

8. The sureties shall be responsible for the performance of the sheriff's duty until the approval of new security. They may at any time pray the governor to relieve them, and if, upon being required, the sheriff shall fail to substitute other approved sureties within one month, the governor in council shall remove him from office.

Sheriff's oath.

9. Before entering upon his duty every sheriff shall subscribe the following oath:

"I, A. B., do solemnly swear that I will truly serve the queen in the office of sheriff for the county of——, and promote her majesty's profit in all things which belong to my office, as far as I legally can. I will truly, to the best of my skill and judgment, execute the laws and statutes of the province, and in all things will act uprightly in my office for the honor of the queen and the good of her subjects."

Fine for neglecting to return accounts of forfeitures.

10. If any sheriff delay more than two months after his year of office expires to render an account on oath to the provincial secretary of all forfeitures and debts of the crown levied by him, with the names of parties paying, he shall forfeit eighty dollars to the use of the crown.

Suits upon sheriffs' bonds, how brought.

11. Any person injured by any act or omission of a sheriff, may sue on his bond in the name of the queen, and be entitled to the proceeds with costs. The defendant shall be entitled to costs if judgment be given in his favor, but no action shall be brought upon the bond until judgment shall first have been recovered against the sheriff.

Damages regulated in suits for escapes.

12. In an action brought against a sheriff, jailer, or other officer for an escape under an execution in a civil suit, the jury shall not be bound to find for the whole amount for which the prisoner was committed, but they shall find a verdict for the plaintiff for such sum only as they shall think right and proper under all the circumstances of the case, unless it shall appear on the trial that the escape was connived at, or the officer guilty of gross negligence, and in no case shall they find for more than the amount for which the prisoner was committed.

Writs returned to be endorsed with items of fees.

13. Sheriffs shall return all writs to them directed, with the amount of their fees thereon endorsed, and the several items thereof specifically set forth, otherwise the same

shall not be taxed or recoverable. Sheriffs shall indorse upon every writ returned by them an account of their doings thereon, and when and how executed, and the amount collected on all writs of execution.

14. All actions against sheriffs must be brought within three years from the accruing thereof.

Limitation of actions.

Chapter 63 of the Revised Statutes, (second series.)

OF SURVEYORS OF HIGHWAYS AND HIGHWAY LABOR, EXCEPT IN HALIFAX.

1. The provisions of this chapter shall not extend to the city of Halifax.

City of Halifax excepted throughout this chapter.

2. The districts as now established for the performance of statute labor on the roads are confirmed.

Road districts as established confirmed.

3. The sessions may erect new districts, or alter the limits of those established.

Districts, how altered; new ones, how established.

4. Persons over sixteen and under sixty years of age, being able to do a reasonable day's work for themselves, or being freeholders able to pay the commutation, or hire the labor in this chapter prescribed, without injury to their families, and not being military persons, or holding commissions from her majesty in the military or civil department of the army, nor clergymen, nor ordained ministers, nor teachers of academies or grammar schools, nor licensed schoolmasters, shall annually perform upon the highways the number of days labor following, by themselves or sufficient substitutes to be approved by the surveyor of highways or commissioners of streets, and provided with the tools by him or them directed, viz.:

Persons liable to perform statute labor, and the amount

Every person above twenty-one years and under sixty years of age being a householder and the owner or possessor of real or personal estate, and not being a hired servant, journeyman or day laborer, nor residing with his parents, shall perform six days labor.

Every person above twenty-one years of age, being a hired servant, journeyman or day laborer, shall perform two days labor; masters of vessels and hired seamen, not being freeholders to be considered as hired servants.

Every person above twenty-one years of age residing with his parents shall perform three days labor.

Every person above twenty-one, and under sixty years of age, not being a householder, hired servant, journeyman or day laborer, nor residing with his parents, shall perform four days labor.

Every minor and apprentice, above sixteen and under twenty-one years of age, shall perform two days labor.

If a freeholder to perform day, see page 741.

Labor of horses
and teams.

5. In addition to the labor in the last section mentioned, every such person over twenty-one and under sixty years of age, owning working oxen, or saddle or draught horses or mules shall perform one day's labor for every working ox, and every saddle or draught horse, or mule; but no person shall be liable to perform more than four days labor, on account of any number of oxen, horses, or mules by him owned.

Oxen pasture

6. Persons usually owning working oxen, or a working ox, and pasturing the same, shall not be relieved from statute labor in respect of such ox or oxen, unless such ox or oxen shall have been out of their possession *bona fide* for two months previously to the time for performing such labor.

Fine for neglecting to send teams, &c.

7. Every such person so owning any such working oxen, draught horses or mules, shall, when required by the surveyor or commissioners, send such oxen or ox or horses or mules, properly yoked and harnessed, to labor upon the highways under a penalty of seventy cents a day for every such pair of oxen, or ox, or horse or mule respectively, and for every pair of oxen and every horse or mule so sent to labor, or the penalty therefor paid, every such person shall be allowed one day's labor.

Persons above sixty years having teams required to send them.

8. Every person above sixty years of age, being a householder and owning working oxen or draught horses or mules, shall, when notified, send to labor upon the roads a pair of oxen or ox, or one draught horse or mule, at the option of the surveyor or commissioners, properly harnessed, for four days, or, at the option of the person, such pair of oxen or ox, or draught horse or mule, with a driver, for two days; and every such person so notified who shall not send the same shall forfeit for every day's omission seventy cents for the pair of oxen or draught horse or mule, and one dollar and twenty cents for the pair of oxen or draught horse or mule with a driver, to be commuted or sued for and recovered in manner as hereinafter directed as respects claims for non-performance of days labor.

Truck or waggon to be sent if party own such.

9. When any person owning oxen or draught horses or mules, shall be so required to send any such oxen or horses or mules, such person shall also, if required by the surveyor or commissioners, send therewith a cart, truck, or waggon if he shall own one, which the surveyor or commissioners consider fit, and in case of neglect shall forfeit forty cents for every day.

A day's work shall be eight working hours. Lists, how made out.

10. A day, when mentioned in this chapter, shall mean eight working hours.

11. The surveyors and commissioners shall make out lists of persons liable to perform highway labor, whether by themselves or in respect of owning oxen, horses, or mules, and shall be responsible for the correctness thereof.

Persons, how and when summoned.

12. The surveyors and commissioners shall cause to be summoned the persons contained in their lists to labor upon

Surveyors of Highways shall be indemnified when they bring their action under the written order of the Justices. See Chap. 12, Sec. 20, page 13.

the highways at the most seasonable time, between the first day of June and the first day of September in every year, seed time and harvest excepted, by giving them six days notice of the time and place where they are to be employed, and of the tools to be brought for such labor; the notice to be given either by the surveyors or commissioners, or by any person by them authorized, and to be left verbally or in writing, with some person of the age of discretion, at the usual place of abode of the party; and at the time and place appointed, the surveyors and commissioners shall attend and oversee the persons so summoned to labor in making and repairing the highways and bridges in the most useful manner during the number of days required by this chapter for each person to labor, and the surveyors and commissioners shall be excused from any other service upon the highways than that of overseeing the persons employed thereon.

moned; season
for repairing
roads.

13. In the following counties instead of the time prescribed in the last section, the labor shall be performed within the times following in every year, viz.: in the counties of Yarmouth, Shelburne, Queen's, and Lunenburg, between the fifteenth day of May and the fifteenth day of September; in the county of Cape Breton between the first day of June and the fifteenth day of October, and in the county of Richmond between the first day of May and the fifteenth day of October.

Certain coun-
ties excepted,
and seasons
specified.

14. Every person liable to perform labor under this chapter who has been duly notified, but who may have left the district and shall be absent therefrom during the time appointed for the performance of his labor, and shall not have provided a sufficient substitute or paid the commutation therefor as hereinafter prescribed, or shall not adduce satisfactory proof of his having performed or so commuted, or otherwise paid for his statute labor in some other district, shall, if he shall return to his usual place of abode within the year, pay sixty cents for every day's labor to which he was liable.

Absent persons
liable on re-
turn.

15. In case a highway shall become obstructed, or a bridge broken down or carried away, or the road rendered impassable by any unforeseen cause except by the falling or drifting of snow, the surveyors of highways or commissioners of streets, under the direction of two justices of the peace, shall notify such persons within the district as may be deemed necessary, to attend immediately either by themselves or with their teams as may be considered advisable to remove the obstructions or make such repairs upon the highway or bridge, as may be by the justices considered absolutely necessary to render the same passable; and every person so attending and laboring shall be allowed for the labor by a reduction of the like number of days from the labor to be by him performed under this

Obstruction of
roads, bridges,
&c., from unfor-
seen causes.

chapter either for that or the subsequent year, as the same may occur before or after the time limited for the performance of highway labor in the district, in the same manner and to the same extent as if the labor had been performed at the usual time; and every person duly notified to attend and labor under this section who shall neglect so to do, shall be liable to the same forfeitures as if he had neglected to attend and labor at the regular time, such forfeiture for each day, when paid, to reckon for one day's labor of such person under this chapter.

Commutation
of labor.

16. If any person liable to perform labor hereunder shall prefer paying money to doing the labor, he may at or before the day on which he shall be notified to attend and labor, pay to the surveyor or commissioners a commutation for the whole labor to be by him performed, but not for any part thereof, at the rate of sixty cents for every day's labor, to which he may be liable for the current year; and if any person so offering commutation shall be sued for not performing his labor, on proof of the tender of the commutation, and on the same being paid at or before the trial the plaintiff shall be non-suited; and the commutation for the labor of an ox, shall be half that of a pair of oxen.

Fine for non-
attendance.

17. Every person duly notified who shall not labor agreeably to the notice, or tender the commutation therefore as in the last section directed, shall forfeit sixty cents for every day's labor to be by him performed.

Relief to poor
persons.

18. Two justices of the peace for the county may, by a certificate under their hands, relieve any person from a portion of his labor hereunder, if they shall be satisfied from his circumstances and situation in life he is really entitled to such relief.

Persons resi-
ding on islands.

19. No person residing upon an island whereon there are any highways upon which the performance of labor under this chapter may be enforced, shall be obliged to work or furnish any labor hereunder upon the main land, or be liable to any penalty for not so doing, but every person so residing upon an island and liable to perform labor under this chapter, shall perform the same upon some highway or bridge on the island; and where the island shall be connected with the main land by a causeway or bridge, such portion of the labor as may be required to keep the causeway or bridge in repair, or to rebuild the same, shall be performed thereon.

Sessions may
order labor on
particular
roads.

20. The sessions may grant permission in writing to persons to perform their labor upon such roads as they shall direct, and the faithful performance by such persons of the labor as directed by the sessions shall be held to be the performance of their ordinary highway labor under this chapter, but they shall, within one week after the performance of the labor, obtain from the surveyor or commis-

sioners for the district, who, if the labor has been faithfully performed, are hereby required to grant the same, a certificate of the due performance thereof; which permission and certificate shall be a bar to any action brought against any such person for non-performance of his ordinary highway labor under this chapter.

21. No surveyor shall alter any highway without the consent of two justices of the peace for the county, although the owner of the land required for the alteration may assent thereto.

Highways not to be altered without the consent of two justices

22. The surveyors and commissioners shall, as often as they shall deem necessary during the winter, order the inhabitants to work with their shovels, horses, oxen and sleds upon the highways, in order that the same may be rendered passable, and every inhabitant not complying with the order shall, for every omission, forfeit one dollar; but no person shall be obliged to furnish more than one days' labor of himself and team for any one fall of snow, or work in any case when the fall or drift of snow shall not exceed twelve inches in depth.

Winter labor.

23. Every surveyor shall, annually, on or before the first day of the sessions which shall happen next after the time herein limited for the performance of highway labor, make a true and faithful return in writing, under his hand, to the clerk of the peace, of the labor performed under his directions, designating the names of the persons and the labor performed by each, and shewing the commutations and fines by him received and the expenditure thereof, and the amount of monies then in his hands, and which latter he shall at the same time pay over to the clerk of the peace, to be expended under the direction of the sessions upon the roads.

Returns of surveyor, how made,

24. Two justices of the peace for the county, on a statement under oath (see appendix A) of persons applying for remission of statute labor, may, by a certificate endorsed on such statement, (see appendix B) remit such part of the statute labor as, in their opinion, the applicant may be entitled to; and such statement so endorsed, shall be returned by the surveyor to the clerk of the peace and be by him laid before the sessions.

Remission of statute labor.

25. Absent persons shall be notified after the return required by section fourteen.

Notification of absent persons.

26. Each surveyor of highways, after six days attendance, shall be entitled to retain eighty cents per day out of any statute labor money he may have in his hands, or be credited therefor the following year.

Surveyors of highways, payment of.

27. Each surveyor who shall, by neglect or misconduct, cause the loss of any statute labor, shall be liable to pay double the amount of such statute labor, to be recovered as debts of that amount are now recoverable; such amount to be proceeded for within two years, and when recovered

Loss of statute labor through neglect, penalty for.

to be applied as follows:—one-half for the roads within the county or district, and one-half to the prosecutor.

Recovery of
fines incurred
by minors.

28. All fines and forfeitures incurred by minors under this chapter may be recovered from the parents, masters, or guardians of such minors, with whom such minors reside, or who have a right to receive their wages, in the manner provided in the next section.

Fines, how re-
covered and ap-
propriated.

29. Forfeitures, except under the fourth and fifth sections of this chapter, shall be sued for and recovered by the surveyor or commissioners by their name of office, as surveyor of highways or commissioners of streets for the place for which they have been appointed, or in the individual names of them, or any of them, or by and in the name of any person who will sue therefor, and in any case in the same manner and with the like costs as if they were private debts; and, when recovered, shall be applied by the surveyor or commissioners to the repair of the highways.

APPENDIX.

A.

I, A. B., do swear that I am of the age of —— years, [*here insert with or without a family,*] am sick or infirm—own real estate of the value of ——, and personal estate of the value of ——. So help me God.

B.

We, ——, and ——, —— justices of the peace for ——, hereby authorize the remittal of —— days statute labor to the within named——.

Chapter 40 of Acts of 1860.

AN ACT TO AMEND CHAPTER 63 OF THE REVISED STATUTES, (SECOND SERIES.)

Term saddle or
draught horses
defined.

1. The term "saddle or draught horses," mentioned in the fifth section of the chapter hereby amended, shall include all descriptions of horses of five years old and upwards.

Form of return.

2. Returns of statute labor shall be in such form as shall be prescribed by the sessions in each county.

Monies how
expended.

3. All monies collected by surveyors of highways and commissioners of streets, shall be expended by tender and contract, or by public auction, after three days notice given

in at least two of the most public places in the district; unless in the opinion of the surveyor or commissioner, it would be more advantageous to the public that such expenditure should be by days work. And in cases of expenditure by days work the surveyor or commissioner shall make oath to their accounts as in cases of the expenditure of government road money.

4. Every person above twenty-one years of age residing with his parents and being a freeholder, shall perform six days labor.

Freeholder of age, residing with parents, to work six days.

5. The commutation money in section sixteen of the chapter hereby amended, shall be increased to seventy cents for each days work.

Commutation money increased.

6. Relief shall only be afforded under the eighteenth section of the chapter hereby amended, in case three justices shall concur in granting the certificate required by that section.

Relief under 18th section to be afforded under certificate of three justices.

Chapter 82 of the Revised Statutes, (second series.)

OF INTEREST.

1. No person upon any contract shall take, directly or indirectly, for the loan of monies or goods, above the rate of six per cent per annum. All contracts whereby a greater rate of interest is reserved shall be void; and all persons taking or receiving upon any contract or security a greater rate, shall forfeit treble the value of the monies or goods in such contract or security contracted for or secured.

Interest to be 6 per cent.; contracts reserving higher rate to be void, and offender to forfeit treble value.

2. Any person may, nevertheless, contract for the loan or hire of grain or live stock, upon halves or otherwise, upon the lender taking upon himself all risk of such stock; but if it shall appear that the same, or any part thereof, perished or was lost through the wilful neglect of the borrower, he shall make good to the lender the full value thereof.

Contracts respecting grain or live stock excepted.

3. The foregoing provisions shall not extend to any hypothecation or agreement in writing entered into for money advanced upon the bottom of a ship or vessel, her cargo or freight.

Hypothecation of vessels excepted.

4. Upon all debts or sums certain payable at a certain time, or otherwise, the jury, and the court where there is no jury, on the trial of any issue or inquisition of damages, may, if they shall think fit, allow interest from the time when such debts, or sums certain, were payable, if such debts or sums be payable by virtue of some written instru-

Interest may be allowed in certain cases for delay of payment.

ment at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, such demand giving notice to the debtor that interest will be claimed from the date thereof.

Damages in the nature of interest may be allowed in certain actions.

5. The jury on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, give damages in the nature of interest above the value of the goods at the time of the conversion or seizure, in all actions of trover or trespass *de bonis asportatis*, and above the money recoverable in all actions on policies of insurance.

Limitations of action for taking illegal interest.

6. No prosecution for taking illegal interest shall be commenced but within twelve months from the time the offence was committed.

Chapter 113 of the Revised Statutes, (second series.)

OF THE REGISTRY OF DEEDS AND INCUMBRANCES AFFECTING

LANDS.

Amended in 1865. Chap. 1. Sec 9.

Registrars of deeds, how appointed; deputies how appointed in certain cases.

1. The governor in council may appoint a registrar of deeds for every county in the province, and for every district in which such appointments are now made. In case of the contemplated absence from the county of the registrar, or in case of his illness, he may, with the approbation of the governor and council, appoint a deputy, who may perform all the duties of the registrar during such absence or illness, and for all his acts the registrar and his sureties shall be responsible.

Fire-proof safes to be provided.

2. Fire proof safes shall be provided in the several counties and districts for the preservation of the records, books, and papers of the registry.

Provisions for safe keeping, &c., of books of registry.

3. The grand jury and sessions shall provide for the custody and safe keeping of the books of registry, and see that they, with the indices, are placed and kept in good and efficient condition; and shall assess upon the county, with the county rates, such sums as may be necessary from time to time in the premises.

If no assessment, justices to amerce.

4. In case the grand jury shall not comply with the foregoing section, the justices in session may amerce the counties respectively, for the necessary amount, and may direct the mode of its application.

Bonds to be given.

5. No registrar shall enter upon the duties of his office until he shall have given bond to her majesty, with such sureties, and to such amount, and in such form as the governor in council may direct, for the faithful performance of the duties of his office, and the indemnifying of all parties who may be injured by his default or misconduct, nor until

he shall have satisfied the governor in council that he has provided a suitable place for the custody of all deeds, papers, and books of registry, which may come to his charge or keeping.

6. Every registrar shall furnish well bound books, of a kind to be approved of by the governor in council, as suitable for the registry of deeds and incumbrances affecting lands, and in which books such incumbrances and deeds shall be registered.

Books of registry; how provided; their kind and quality.

7. A double index to the books of registry shall be made and kept by every registrar, including, in case of deeds, the names of all the grantors and grantees, and in case of judgments and attachments, the names of all the plaintiffs and defendants.

Double indexes of the books of registry to be kept.

8. A double index shall be made and kept in like manner by every registrar, of all deeds proved and lodged in his office, and of all dockets of judgments and attachments lodged therein; in which every deed shall be entered so soon as it is proved and lodged, and every docket of judgment or attachment when lodged.

Double indexes of books of entry to be kept.

9. All deeds, judgments, and attachments affecting lands shall be registered in the office of the county or district in which the lands lie.

Deeds, &c. to be recorded where the lands lie.

10. All deeds shall be copied into the books of registry, so as to be, as near as possible, transcripts of the original; and copies of any plans or schedules annexed shall likewise be entered in the books.

Deeds to be copied so as to be transcripts; plans to be entered in the books.

11. Deeds within the province may be proved, first, upon the oath of one of the subscribing witnesses to the due execution thereof by the parties executing the same; or, secondly, upon the personal acknowledgment by the parties, under oath, of the due execution thereof.

Deeds, how proved within the province.

12. Such oaths may be administered by the registrar of the county or district, and shall be so certified upon the deed; or they may be administered by a judge of the supreme court, or a justice of the peace, or by any other registrar, who shall sign a certificate thereof, declaring the date of the attestation on the deed, and the same shall be registered thereupon along with such certificate.

Oaths administered by registrars, judges or justices of the peace; certificate to shew the date.

13. In case all the subscribing witnesses to the execution of a deed by all or any of the parties thereto shall be dead or absent from the province, the registrar shall register the deed upon sufficient proof of such death or absence, and of the hand writing of any one of the subscribing witnesses thereto, to be made before him or any other registrar, or a judge of the supreme court, upon oath, such oath to be endorsed upon the deed or annexed thereto, and registered therewith.

Deeds how proved where subscribing witnesses dead or absent.

14. Deeds may be proved out of the province, as well in foreign countries as in the British dominions, by the oath of a subscribing witness, or the acknowledgment of the

Deeds how proved out of the province.

parties under oath, as in the eleventh section ; such oaths to be administered by a judge of any court of record, by the mayor of any city, by a justice of the peace, or by a notary public, residing respectively at or near the place where the deed is proved ; and the attestation, with the date, to be certified under the seal of a court of record, or of a city, or under the hand and seal of a notary public ; and where a deed is proved in a foreign country the oath may be administered by, and the attestation, with the date, certified under the hand and seal of, any public minister, ambassador or consul from the port of Great Britain, or vice consul residing at or near the place where the deed is proved.

Deeds, &c., duly proved and lodged for registry held registered from the time of being lodged.

Deeds, &c., duly proved and lodged for registry held registered from the time of being lodged.

When a deed is executed under a power of attorney, the power must be registered.

A subpoena may may issue to compel the attendance of a witness on the production of a deed for proof and registry

Certificate of registry to be received in evidence.

Deeds to have priority from date of registry.

Mortgage, &c., shall not be tacked.

Mortgages how released.

15. Where a deed shall have been duly proved and lodged, or the docket of a judgment, or the copy of a writ of attachment with the description and appraisement, duly lodged as above, for registry, the time when the same shall have been so proved or lodged shall be accounted the date of the registry of such deed, judgment or attachment, respectively ; and the same shall be registered in the same order in which they were so lodged or proved.

16. The registry of a deed executed by virtue of a power of attorney shall not be valid unless such power or a deed subsequently confirming the authority given thereby, shall be registered in the office of the county or district where the lands lie.

17. Process of subpoena may be issued out of the supreme court as in ordinary cases, and with the necessary variation in form, to compel the attendance of any witness to, or the production of, any deed for proof thereof, that the same be registered ; and the court or a judge shall have the like power to punish any disobedience to such subpoena in the same manner and to the same extent as in other cases ; but no witness shall be compelled to produce under such subpoena any deed which he would not be compelled to produce on a trial.

18. The certificate of registry endorsed on any deed, docket of judgment, or attachment, and signed by the registrar, shall be taken and allowed in all courts as evidence of the registry.

19. Deeds or mortgages of lands duly executed but not registered, shall be void against any subsequent purchaser, or mortgagee for valuable consideration, who shall first register his deed or mortgage of such lands.

20. No mortgage, judgment, or other incumbrance affecting lands, shall have any priority or effect by reason of being held by or vested in the same person with another mortgage or incumbrance of prior date and registry.

21. Mortgages shall no longer be discharged by certificate of release, but the release itself shall refer to the registry of the mortgage, and need not contain the descrip-

tion of the premises at full length; and the same shall be recorded like other deeds, and a marginal note thereof shall be made by the registrar, without further fee, on the book of registry of the mortgage referring to the registry of the release.

22. Judgments duly recovered and docketed shall bind the lands of the party against whom the judgment shall have passed only from and after the registry thereof in the county or district wherein the lands are situate; and deeds or mortgages of such lands, duly executed, but not registered, shall be void against the judgment creditor, who shall first register his judgment.

Judgments to bind lands from date of registry.

23. The docket of a judgment to be registered shall contain the names of the parties, the amount recovered, the signature of the judge, and the time of signing; and a copy of such docket, certified under the seal of the court and the hand of the prothonotary where the judgment was recovered, being lodged for registry, shall be entered in the books without further proof.

Dockets of judgment, their contents, how registered.

24. Lands levied upon under writs of attachment shall be bound thereby only from the time that true copies of the writ and of the description and appraisement of the lands, certified by the sheriff or his deputy, under his hand, shall be lodged for registry in the county or district where the lands lie; which copy shall be recorded without further proof, and shall continue to bind the lands until thirty days after final judgment signed in the cause.

Writs of attachment; lands how bound thereby: how registered.

25. Judgments and attachments so entered shall be discharged by an entry on the margin of the registry thereof, to be made by the registrar upon the filing of a release duly acknowledged or proved by a subscribing witness to have been executed by the parties by whom the judgment was obtained, or of a certificate under the seal of the court and the hand of the prothonotary that the judgment has been satisfied, or the suit in which the attachment was issued, discontinued or set aside.

Judgments and attachments how discharged

26. Leases of land for a term exceeding three years shall be void against any subsequent purchaser, mortgagee for valuable consideration, or judgment creditor, unless such leases shall have been previously registered, and a reasonable rent reserved in good faith therein.

Leases for more than three years to be recorded, and a reasonable rent to be reserved.

27. Grants of land, made after the thirty-first day of March, 1854, shall not be recorded in the office of the provincial secretary; but instead thereof, shall be recorded in the office of registry of deeds of the county in which the lands lie.

Future grants of land to be recorded in registry of deeds.

28. The duplicate originals of grants kept in the office of the surveyor general, signed by the governor, shall hereafter be signed also by the provincial secretary.

Duplicate originals of grants to be kept in surveyor general's office.

29. Books similar to those now in use in the secretary's office for the registry of grants, shall be furnished to the

Separate books for grants to be furnished to re-

gistrars; and grants in duplicate to be forwarded.

Fees.

Registrar at Halifax may keep as many contemporaneous books as may be necessary.

Plans of partition of townships.

Registry books to be kept in safes, except in Halifax.

Penalty.

various registrars of deeds throughout the province; and grants when completed shall be transmitted, with a duplicate plan, by the surveyor general, to the registrars of deeds, who shall record the same in the books so furnished, and attach thereto the duplicate plan, and shall keep an index to the records thereof in the name of each grantee, and shall be entitled to receive from the general revenues a fee of fifty cents for each grant so recorded, payable on or after the thirty-first day of December in each year, on their accounts being duly attested to and audited by the surveyor general.

30. In the county of Halifax the registrar of deeds shall keep as many contemporaneous registry books as he may find necessary to enable him to register, without delay, the deeds and certificates presented for registration; and he shall not be obliged to record in one book the deeds and certificates in the order in which they are presented.

31. The plans of partition of any township, which, on the execution of any writ of partition, were returned to the office of the prothonotary at Halifax, shall be transmitted to the registrar of deeds of the counties in which such townships are situate; such plans shall be certified by the prothonotary at Halifax to be the original plans so returned.

32. In all the counties except Halifax the registry books shall be kept at all times, except when in actual use, or when required in any court for the purposes of justice, in the safes provided for the office, and any registrar of deeds who shall offend against this provision, shall incur a penalty of eighty dollars for each offence, and on a second conviction shall be ever after incapable of holding the office of registrar of deeds in any county or district of this province.

Chapter 9 of the Acts of 1859.

AN ACT TO FACILITATE THE TAKING OF EVIDENCE AND THE REGISTRY OF DEEDS.

Deeds may be registered on declaration made in Great Britain and Ireland and duly attested.

Declarations made under Imperial act 5

1. Deeds may be registered on declaration and acknowledgments heretofore made or hereafter to be made in Great Britain and Ireland before the judge of a court of record, or the mayor or recorder of a city or borough, with the date of the declaration or acknowledgement certified and expressed, attested under the seal of a court of record or of a city or borough.

2. Declarations now or hereafter made in conformity with, and which shall have legal effect and operation in

the place where the same may be made, under and by virtue of an act of the imperial parliament, passed in the fifth and sixth years of the reign of his late majesty king William the fourth, chapter sixty-two, relating to the abolition of oaths in certain cases, and of any act in amendment thereof, shall have the same operation and effect in this province as if authenticated under oath before the same officers before whom the declaration had been made, and if these officers had been authorized to administer such oath.

and 6 W. 4th cap. 62 shall have same effect as if authenticated under oath.

3. Acts, deeds, evidence, acknowledgments, and declarations, now or hereafter done, made, taken, or proved in Great Britain or Ireland, or any of her majesty's possessions, with those forms of authentication and proof which shall be the legal mode of proof and authentication in those places, shall have the same force and effect in this province as if sworn to before the same persons and officers by and before whom the proof and authentication may be made, and as if those persons or officers had power to administer an oath.

Acts, deeds, &c. done in Great Britain and Ireland and British possessions and authenticated legally there, to have same effect as if sworn to.

Amended 1865, Cap. 3.

Chapter 115 of the Revised Statutes, (second series.)

OF THE DESCENT OF REAL AND PERSONAL ESTATE.

1. Where any person shall die entitled to any real estate in fee simple or for the life of another, not having devised the same, it shall descend to his children in equal shares, and in case of the decease of any of his children, to such as shall legally represent them, such representatives to take the share of the deceased parent in equal proportions, and if there be no child of the intestate living at the time of his death; to his other lineal descendants; and if all the descendants shall be in the same degree of kindred they shall share the estate equally, otherwise they shall take according to the right of representation.

Rule of descent of undivided real estate where deceased leaves issue.

2. If the deceased shall leave no issue, one-half of his real estate shall go to his father, and the other half to his widow in lieu of dower, and if there be no widow the whole shall go to his father.

Where he leaves no issue.

3. If he shall leave no issue, nor father, one-half of his real estate shall go to the widow, and the other half shall be distributed in equal shares to his mother, brothers and sisters, and the children of any deceased brother or sister by right of representation; and if there be no widow the whole shall go to his mother, brothers, and sisters, and the children of any deceased brother or sister by right of repre-

Other cases, and as to collateral kindred.

sentation; and where the intestate shall leave no issue, and no widow, father, mother, brother or sister, nor the children of any brother or sister, his estate shall go in equal shares to his next of kin in equal degree, excepting that where there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor who is more remote, but in no case shall representatives be admitted among collaterals after brother's and sister's children.

Rule in case of unmarried deceased minor children leaving brothers surviving, or their issue.

4. If any person shall die leaving several children, or leaving one child and the issue of one or more others, and any such surviving child shall die under age, and not having been married, all the estate that came to the deceased child by inheritance from such deceased parent shall descend in equal shares to the other children of the same parent, and to the issue of any such other children who shall have died, by right of representation.

Method of dividing property under last section.

5. If at the death of such child who shall die under age, and not having been married, all the other children of his parent shall also be dead, and any of them shall have left issue, the estate that came to such child by inheritance from his parent shall descend to all the issue of the other children of the same parent; and if all the issue are in the same degree of kindred to such child they shall have his estate equally, otherwise they shall take according to the right of representation.

Mode of computing degrees of kindred.

6. The degrees of kindred shall be computed according to the rules of the civil law, and the kindred of the half blood shall inherit equally with those of the whole blood in the same degree.

Where intestate hath no kindred, the widow shall inherit.

7. If the intestate shall have no kindred, his estate shall go to the widow to her own use.

The interest of deceased in lands held in trust chargeable with debts.

8. The interest of a party in lands held in trust for him in fee simple shall descend and shall be chargeable with his debts in the same manner as if he had died seized of such lands.

Rules for distributing the personal estates of intestates.

9. The personal estate of any person who shall die without having bequeathed the same shall be distributed as follows:

The widow shall be allowed all her paraphernalia, articles of apparel or ornament, according to the degree and estate of her husband, the apparel of the minor children, and also such provisions and other articles as shall be necessary for the reasonable sustenance of herself and the family under her care for the period of ninety days after the death of her husband; and, in addition, such provisions and other necessities for the use of herself and family, as shall be allowed and ordered by the judge of probate, and such allowance shall be made, as well when the widow waives the provision made for her in the will of her husband as when he dies intestate.

If a married woman shall die intestate, in that case, the widow, one half of the Real & Personal Estate, except the land she own right, shall be her for her Support.

The wearing apparel of the deceased, not exceeding forty dollars in value, shall be distributed at the discretion of the executor or administrator among the family of the deceased.

The remaining personal estate, after payment of the debts of the deceased, the charges of his funeral, and the necessary medical and other attendance upon him in his last illness, and the expenses attendant upon the settlement of the estate, shall be distributed, one-half to the widow, if any, and the residue among the persons who would be entitled to the real estate, and if there be no widow, then the whole among such persons.

10. Any child born after the death of the father, there being no provision made in his will for such child, shall have the like interest in the real and personal estate of his father as if he had died intestate, and all the devisees and legatees in the will shall abate proportionably their respective devises and bequests, the share of the posthumous child to be set out and assigned by the court of probate so as to affect as little as possible the disposition of the property made by the testator.

*See act-1874
Cap 8
* third*

Posthumous children how provided for where testator has made no provision.

11. Any real or personal estate given by the intestate as an advancement to any child or grandchild, shall be considered as a portion of the estate of the intestate, so far as regards the division and distribution of the estate of the deceased, and shall be taken by such child or grandchild towards his share of the intestate's estate.

Advancement how treated on division and distribution.

12. If such advancement shall exceed the share of the child or grandchild, so advanced, he shall be excluded from any further portion in the division and distribution of the estate, but he shall not be required to refund any of such advancement; and if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

Same subject.

13. If the advancement be in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided; and if in either case it shall exceed the share of real or of personal estate respectively that would have come to the child or grandchild, so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate as will make his whole share equal to those of the other heirs who are in the same degree with him.

Advancement in real estate how to be considered and regulated.

14. All gifts and grants shall be deemed to have been made in advancement, if expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing, or upon examination before the judge of probate on oath as such, by the child or grandchild, and not otherwise.

What gifts or grants shall be held advancements.

15. If the value of the estate so advanced shall be Value if stated

*the value of the estate, then when Mother, Mother and
then - dual shares; with children of any deceased / see
section by right of representation of estate by no use
the other sister, or child of the deceased.*

by testator to
be conclusive

expressed in the conveyance, or in the charge or valuation thereof made by the intestate, it shall be considered as of that value in the division and distribution of the estate, otherwise it shall be estimated according to its value when given.

Advancement
as among
grandchildren.

16. If any child or grandchild so advanced shall die before the intestate, leaving issue, the advancement shall be taken into consideration in the division and distribution of the estate, and the amount thereof shall be allowed accordingly by the representatives of the child or grandchild so advanced as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them.

Tenancy by the
curtesy and in
dower not af-
fected hereby.

17. Nothing in this chapter contained shall affect the title of a husband as tenant by the curtesy nor that of a widow as tenant in dower.

Lands held in
dower, how di-
vided.

18. Lands held as dower by the widow shall, after her decease, be divided as hereinbefore directed. Lands set off as dower prior to the act of fifth Victoria, chapter twenty-two, shall after the decease of the widow, be divided as before the passing of that act.

Estates not
devised to be
distributed as
intestate.

19. All such estate, real or personal, as is not devised in a will, shall be distributed as if the testator had died intestate.

Chapter 2 of the Acts of 1862.

AN ACT FOR THE INCORPORATION AND WINDING UP OF JOINT STOCK COMPANIES.

Declaration
required on for-
mation of com-
pany by five or
more—its con-
tents, &c.

1. Any five or more persons who desire to form a joint stock company, and to become incorporated, may make and sign a declaration thereof, in writing, according to the form in schedule A., in which they shall state the names and residences of the subscribers, the number and amount of shares of which the capital stock is to consist, the number of shares taken by each subscriber, the corporate name of the company, not being that of any previously existing company, the object for which the same is formed, the name of the town or place where the business of the company is to be carried on, and the amount of capital to be paid up before the company shall go into operation; but no company shall be thus incorporated for banking, insurance, or ordinary mercantile and commercial business; nor shall any company incorporated under this act engage therein.

Restrictions.

Declaration to

2. Such declaration shall be signed in duplicate by the

parties desirous of being incorporated, by themselves or an agent or agents thereunto duly authorized in writing; and in such case the power of attorney shall, if executed out of the province, be duly authenticated by a notarial certificate; and such power of attorney and certificate shall be attached to the declaration; and the declaration shall in all cases be, and purport to be, executed in the presence of a subscribing witness to each signature; and one of the duplicates, with the original power of attorney attached, shall be filed in the office of the registrar of deeds for the county or district wherein the proposed place of business is situate; and the other duplicate, with a copy of such power of attorney, shall be filed in the office of the provincial secretary at Halifax.

be in duplicate
—how signed.

To be filed in
offices of regis-
trar of deeds
and provincial
secretary.

3. When the formalities prescribed in the foregoing sections have been complied with, the persons signing the said declaration, their associates, and successors, shall be a body corporate, by the name therein mentioned, to the same extent as companies incorporated by act of the legislature, and be subject to chapter eighty-seven of the revised statutes, "of general provisions respecting corporations," except as herein provided.

On compliance
with foregoing
sections, par-
ties to be a
body corporate.

4. Before any such company shall go into operation twenty-five per cent. of the subscribed capital shall be actually paid up in cash; and a certificate thereof, verified by oath of the president and treasurer of the company, shall be filed in the office of the registrar of deeds for the county.

When to go into
operation.

5. The term of such company's existence shall not extend beyond the year A. D. 1875.

Term of exis-
tence.

6. Every shareholder shall be liable in his person and separate estate during membership, to an amount equal to double the stock held by him, deducting therefrom the amount actually paid to the company on such stock, unless he shall have made himself liable for a greater amount by becoming surety for the debts of the company. But no shareholder, who may have transferred his interest in the stock of any such company, shall cease to be liable for any contracts of the company entered into before the filing of the certificate of transfer, provided by the sixteenth section of this act, so as any action in respect of such liability shall be brought within six months after the filing of such certificate.

Liability of
shareholders.

Liability after
transfer of
shares.

7. If the directors declare and pay any dividend when the company is insolvent, or whereby the company is rendered insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally personally liable for all the debts of the company then existing, and for all debts subsequently created during their tenure of office; but any director who objects to the payment of such dividend, may, before such payment, file with the

If dividend
paid out of ca-
pital, directors
liable for debts.

Directors filing
objections
except.

secretary of the company, and with the said registrar, a written statement of such objection, and shall be thereby exempt from such liability.

Meeting for increasing capital stock—how called, &c.

8. Whenever the whole capital stock has been taken up, and a majority of the directors of a company, by their votes, resolve and declare that the capital stock of such company is insufficient for the purposes thereof, they may call a general meeting of the stockholders of the company, giving at least thirty days notice of such meeting, by a written notice, signed by the secretary, and addressed to each of the shareholders or their representatives, and transmitted through the post office, and by advertisement thereof in a public newspaper, published nearest to the place where the company's affairs are transacted, and continued to be so published until the day of meeting.

Proceedings thereat.

9. At such meeting a majority of the stockholders holding a majority of the shares in the company, may, by their votes given thereat, in person or by proxy, pass a resolution authorizing the directors of the company to increase the capital stock thereof to such amount as they deem necessary for the purposes of the company, the amount whereof shall be expressed in such resolution; and thereupon the said directors may pass a bye-law for the purpose of increasing the capital stock to the amount mentioned in the resolution of the general meeting of stockholders as aforesaid, and for declaring the number of shares into which such capital stock shall be divided, and the time and manner of payment of the several calls to be made for the payment of such new stock, twenty-five per cent at least of which shall be actually paid up in cash.

Twenty-five per cent to be paid in.

New stock—how taken up.

10. Upon the passing of such bye-law all persons who desire to become holders of any share or shares of such new stock, may make and sign a declaration, in which shall be set forth:

Contents of declaration.

11. The amount of such new stock; the total amount of the company's capital stock, including new stock; the number of shares of such new stock; the total number of old and new shares of stock; and which declaration shall also contain a column wherein shall be set in figures opposite to the signature of each subscriber the number of shares for which he subscribes.

To be in duplicate and filed.

12. Such declaration shall be signed in duplicate, shall be certified and filed in the office of the provincial secretary, and in the district or county registry of deeds office, in the manner mentioned in the second section of this act.

Not to be filed until half stock subscribed.

13. The declaration shall not be so filed or certified until at least one half of the new stock has been subscribed.

Names of stockholders to be entered in books properly.

14. When the declaration has been so filed the name of every stockholder contained therein shall forthwith be

entered in the books of the company, as that of a stockholder, with the date of subscription and number of shares subscribed for; and so long as any of the said stock remains unsubscribed for any person desirous of becoming a stockholder may subscribe his name to the declaration filed in the registry office, for one or more of such unsubscribed shares; and the name of such subscriber shall forthwith be entered into the books of the company in manner aforesaid.

Remainder of stock, how taken up.

15. Upon the performance of the several acts mentioned in the next preceding section, and payment of the instalments as required by the tenth section, every such stockholder whose name has been subscribed to the declaration, shall immediately thereupon become a member of the corporation, and from thenceforth shall have and enjoy the same rights and privileges, and be subject to the same conditions, restrictions and liabilities, to which the original stockholders are thenceforth entitled or liable; and such new shares of stock shall from thenceforth be subject to all the provisions of this act, relative to such companies, in the same manner as if they had formed a part of the stock originally subscribed.

Upon compliance with act new stockholder to be a member of the corporation.

16. The bye-laws of the company, and all the amendments thereof, made therein from time to time, and the names of all future shareholders in the company, and the transfers of all shares, with the dates of such transfers, shall be certified in duplicate by the president under his hand, which certificate shall, within one month, be transmitted to the provincial secretary's office, and filed in the office of the registrar of deeds of the county or district; which transfers shall not be complete until such certificate is filed.

Bye laws and transfers to be certified and filed.

17. If three or more parties shall desire to be incorporated for any lawful purpose or business, and shall make, execute, and file a declaration similar to that referred to in the first section, except that no reference need be made to the proposed capital, and shall state therein that they do not seek under such incorporation to become free from personal responsibility, such parties shall thereupon become a body corporate, and shall be entitled forthwith to go into operation; but in that case the members thereof shall be personally liable for all debts and undertakings of the company.

Transfer not completed until filed.

Declaration required for the formation of a company by three or more.

18. No company shall become incorporated under this act, or be entitled to the privileges thereof, unless it shall go into operation within one year from the filing of the declaration first hereinbefore referred to.

Liability.

Company must go into operation within one year.

19. Whenever it shall be made to appear to the supreme court or a judge, upon affidavit, by a shareholder that such company is insolvent, and that shareholders representing two-thirds of the paid up capital are desirous of winding

Proceedings to wind up company if insolvent, or has suspended, or not commenced business for a year, &c.

Court may appoint a receiver,

And make necessary orders.

Gas and water companies.

Title of act.

up the affairs of the company, or that the company has suspended business for a year, or has not commenced business within a year after the filing of the said declaration, or upon affidavit of a creditor of the company, that his debt is unpaid, that the company is insolvent, and that one month's notice of the application has been given to the secretary, an order may issue to appoint a receiver, as in ordinary cases of co-partnership, and thereupon the whole matter shall be referred to a master, with power to cite parties with books and papers to take evidence and report; and if it shall appear that the said company is insolvent, the said court or a judge may make calls upon the shareholders to the extent of their liability, for all sums needful for discharging the debts of the company, and the costs of winding it up, and may order payment thereof; and may, if deemed fit, order all suits pending against the company, at or after such application, to be stayed, and may order such a distribution of the funds of the company, and make all such further orders for winding up the company, as may appear just and right, and may dismiss such application with or without costs.

20. No gas or water companies shall be incorporated under this act within the city of Halifax.

21. This act may be cited as—"The joint stock companies act of 1862."

SCHEDULE.

Be it remembered that on this — day of —, A. D. 18—, we the undersigned shareholders have agreed and resolved to form ourselves into a company, to be called "————," according to the provisions of chapter 87 of the revised statutes, and an act of the province, entitled "an act for the incorporation and winding up of joint stock companies," for the purpose of ———; and we do hereby declare that the capital stock of said company shall be ——— dollars, which may be increased from time to time, to be divided into — shares, of the value of — dollars each, and that twenty-five per cent. at least of such capital stock shall be actually paid up before the said company shall go into operation.

And we the undersigned stockholders do agree to take and accept the number of shares set by us opposite our respective signatures; and we do hereby agree to pay the calls thereon, according to the requirements of the said act, and of any rules, regulations, or bye-laws of the said company, to be made or passed in that behalf.

And we do hereby appoint ——— to be the place for holding the annual and other meetings of the said company.

Name.	Place of abode.	Number of shares.	Amount.

Amended 1865. Cap. 17.

Chapter 28 of Acts of 1863.

AN ACT TO REGULATE THE ELECTION OF MEMBERS TO SERVE
IN THE GENERAL ASSEMBLY.

Act of 1864. also amended by act of 1865.

1. Every male subject of her majesty, by birth, or naturalization, being of the age of twenty-one years, and not disqualified by law, who shall have been assessed for the year for which the registry hereinafter provided is made up, in respect of real estate, to the value of one hundred and fifty dollars, or in respect of personal estate, or of personal and real estate together, to the value of three hundred dollars, shall be qualified to vote at elections of members to serve in the house of assembly, for the county, township, or electoral division in which he shall be so assessed.

Qualification of voters.

[Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 repealed by chapter 20 of acts of 1864.]

Sections 2 to 12 repealed.

12. In cases within the eleventh section of this act, the clerk of the peace may, if necessary, summon and examine on oath any witnesses he may require to enable him to prove what portion of the names included in the roll belongs to the several polling districts to which the said roll extends, and the reasonable charges and expenses of said witnesses shall be a county charge.

Witnesses may be summoned to ascertain limits, &c.

Their expenses.

[Section 13 repealed by chapter 20 of acts of 1864.]

14. The general sessions at their first meeting, after the passing of this act, shall divide the county or district over which they have jurisdiction into so many sections, to be called "revisal sections," as they shall deem fit, including in each section not less than two nor more than five polling districts, and for each revisal section the grand jury shall annually nominate as revisors six persons, out of whom the justices shall select three, who shall be duly

Revisal sections how formed.

Revisors, appointment of &c.

sworn to the impartial performance of their duty, in the form prescribed in schedule B to this act annexed.

[Section 15 repealed by chapter 20 of acts of 1864.]

Revisal in the
city of Halifax.

16. In the city of Halifax any three or more of the Aldermen to be appointed in each year, as other city officers are appointed, shall annually revise the list of electors within the city qualified to vote at elections for the assembly, in the manner and at the times herein prescribed; and such persons shall be duly sworn, as prescribed in the fourteenth section of this act.

Lists to be
made and given
to revisors.

17. The assessors of each assessment district shall, on or before the twentieth day of January in each year, deliver to the revisors a copy of the assessment roll for the polling districts within the revisal section; and if for any cause any part of the inhabitants therein are exempt from taxation, the assessors shall either include their names in the same or make a separate list of such parties, so that the list shall contain the names of all persons possessed of real or personal estate, in the form following, and deliver it to the revisors:

Assessment roll for polling district No. ———.

Name.	Real Estate of residents within county.	Personal estate of residents within county.	Real estate of non-residents	Personal estate of non-residents.
A. B.	\$100 00	\$0 00	\$0 00	\$0 00
C. D.	0 00	100 00	0 00	0 00
E. F.	0 00	0 00	25 00	0 00
G. H.	0 00	0 00	0 00	0 00

Lists to be pre-
pared and post-
ed.

18. The revisors shall, before the first day of March in each year, select and prepare from the assessment roll alphabetical lists of the qualified electors of each polling district in the revisal sections, distinguishing the residents within the county from the non-residents, and affixing the place of the non-residents when known; and shall, on or before the said first day of March in each year, post up a copy of the said list in three of the most public places in each polling district, with the following notice:

Notice there-
with.

“The revisors will meet at ———, on the second [*if Sunday on the third*] day of April next, at eleven o'clock, A. M., to revise the list of electors for each of the polling district numbers ——— within the revisal district number ———; and any person claiming to add to or strike off a name from the list must give notice thereof in writing, with the cause of objection, to either of us, on or before the

fifteenth day of March next, and also notify every person proposed to be struck off.

Dated the — day of —, A. D., 18—.

A. B. }
C. D. } Revisors.
E. F. }

19. The revisors shall, on or before the twentieth day of March in each year, post up in three of the most public places of each polling district, an alphabetical list of the persons proposed to be added or struck off respectively in each polling district, with a notice appended to each list to the effect following:

List of voters
added or struck
off to be posted.

“The revisors will on the second [*if Sunday the third*] day of April next, at —, in the revisal section number —, adjudicate upon the propriety of adding [*or striking off, as the case may be,*] the foregoing name to [*or from*] the list of qualified voters in district number —.

Notice there-
with.

Dated the — day of —, A. D., 18—.

A. B. }
C. D. } Revisors.
E. F. }

20. The person who proposes to strike a name from the list shall, on or before the fifteenth day of March, give notice in writing to the party objected to, either personally or by leaving it at his last or usual place of abode, and shall prove on oath the giving the notice to the satisfaction of the revisors before they hear the objection.

Notice to party
objected to, &c.

21. At the time and place appointed the revisors shall attend and correct the list, and shall with all convenient despatch make out for each polling district an alphabetical list of the electors thereof resident within the county, and of the non-resident electors, stating residence when known; and on or before the tenth day of May in each year transmit the same to the clerk of the peace. They shall add to or strike from the list the name of any person whose qualification or disqualification is satisfactorily proved to have existed at the date of the last assessment, provided notice of the claim has been given to a revisor on or before the fifteenth day of March; and in case of disqualification, provided it be proved to the satisfaction of the revisors, that notice in writing has been given to the party objected to within the same period.

Meeting of re-
visors, proceed-
ings at, &c.

22. When a firm is assessed in respect of property sufficient to give each member a qualification, the names of the several persons comprising such firm shall be inserted in the list; but if the property be held by a body corporate no one of the members thereof shall be entitled to vote, or be entered on the list of voters, in respect of said property.

Firms.

Bodies corpo-
rate.

23. The revisors, when correcting the list, shall strike therefrom the name of any person who within the twelve calendar months then next preceding shall have received

Paupers to be
struck out.

aid as a pauper under any poor law of this province, or aid as a poor person from any public grant of government money.

Penalty for neglect or refusal of assessors.

24. If the assessors neglect to make up and deliver the lists, or wilfully deliver an incorrect list, or if the revisors neglect to revise the list so delivered, or wilfully transmit an incorrect list, for every neglect or wilful delivery or transmission of an incorrect list every assessor or revisor so contravening this act shall pay a penalty of one hundred dollars, which any person may recover with costs, and each day a list is delayed shall be a separate offence.

List of non-resident electors.

25. The sheriff of the county shall, on or before the twentieth day of May in each year, attend at the office of the clerk of the peace to ascertain the non-resident electors who may be qualified to vote in more than one polling district, and the clerk shall under his direction make a copy of the list of each polling district, with the name of any non-resident elector marked as such who may have selected that polling district. He shall make an alphabetical list of the remaining non-resident electors. When a non-resident elector shall, before the said twentieth day of May, have notified the sheriff in writing of his selection of a particular polling district, his name shall be inserted and entered on the list of that polling district until he become disqualified or direct otherwise. In case no such notification has been made the names of such non-resident electors shall be added to the list for any one of the polling districts in which their qualification exists.

List to be signed by sheriff and deposited with clerk of peace.

26. The list shall be made up, signed by the sheriff, and deposited with the clerks of the peace on or before the twenty-fourth day of June in each year, and shall thenceforth be the register of electors for the county, township, or electoral division.

If register not made that of year previous to be used.

27. If from any cause the register of electors for any polling district is not made up in any year, the register last made up shall be used in its stead for the purpose of election.

Revisors may summon witnesses, &c.

28. The revisors shall have power to summon witnesses to attend at the time and place appointed, to give evidence as to the qualification or disqualification of any person, and to administer an oath and examine the parties, and such witnesses on oath and any person so summoned, who shall neglect to attend without good cause shewn therefor to the revisors, or attending shall refuse to be sworn or give evidence, shall be liable to a penalty of twenty dollars; and every witness attending shall be entitled to receive the same fees and travelling charges as witnesses attending before justices of the peace in civil suits, to be paid by the person at whose instance the respective witnesses may be summoned.

Penalty for non-attendance of witnesses.

Fees.

29. The list of electors for the city of Halifax shall be revised and corrected by the aldermen, as above prescribed; and the city council may regulate the same by bye-laws not inconsistent with this act; and when the list is corrected, and an alphabetical list of every ward or polling district is made up, it shall be signed by the mayor and filed with the city clerk, and be the register of electors for the said city.

Register for city of Halifax, how made up, revised, &c.

30. The reasonable charges of the sheriff, clerk of the peace, city clerk, assessors and revisors, and of any other person required to assist in preparing the register of electors, shall be a county or city charge, and shall be presented, assessed, levied and collected, like other county and city charges.

Expenses of preparing register, how paid.

31. The electoral districts and polling places shall remain as now established.

Electoral districts to remain as at present.

32. When a new assembly shall be summoned, or more than one vacancy occur at or about the same time, the writs shall be so transmitted that the same may be received by the respective sheriffs as nearly as may be at the same time. There shall be at least forty days between the teste and return of writs. The writs shall in the body thereof express the day when the sheriff shall hold his court for the commencement of the election, allowance being made for enabling him to give at least ten days notice of the election throughout the county, township, or electoral division; and in cases of general elections, or where more than one writ shall be required to be issued at or about the same time, the day named for holding the sheriff's court for commencing the elections shall be the same in all the writs.

Form of writs for election, length of notice, &c.

33. The sheriff shall, immediately on the receipt of a writ, endorse thereon the day of receipt, and shall forthwith cause notice in writing or by printed handbills to be posted in some of the most public places within every polling district in the county, township or electoral division for which representatives are to be elected, which notices shall express the day when the sheriff will hold his court at the county court house, or other place prescribed by law for opening the election, being the day named in the writ therefor; and also the time and place at which, in case a poll be demanded, the same will be taken, and the number of representatives to be elected, and for what places in particular under the writs then under the sheriff's hands; and that all persons who are guilty of bribery or undue influence at the said election will, on conviction of such offence, be liable to the penalties mentioned in that behalf in "the corrupt practices prevention act," and the poll shall be taken in the week next following that wherein the sheriff's court for opening the election shall be appointed to be held, and on the same day of the week as the day appointed for holding such court.

Proceedings sheriff on receipt of writ.

Election for
county and
other members
to be conducted
at same time.

34. The election for a county, and the townships or electoral divisions within it that return representatives, shall be conducted at the same time; and the polling for the county and townships or electoral divisions, shall, within the townships or electoral divisions, be taken by the same presiding officers and sheriff's poll clerks, and at the same times and polling places.

Sheriff's court
when to be held
&c., oaths to be
administered.

35. On the day appointed for opening the election, the sheriff or his deputy shall open his court at the county court house, or other place by law prescribed, between the hours of ten and twelve of the clock in the forenoon, and shall read his writs, and shall take the following oath, to be administered by a justice of the peace, or any two electors then present:

"I, A B, do swear that I have not received, and will not receive, any sum of money, office or employment, or gratuity, or any bond, bill or note, or promise of gratuity whatsoever, either by myself or another, to my use or advantage, for appointing any presiding officer to take the poll, or for appointing any poll clerk, or for making any return at this election; and that I will make such appointments impartially and according to law."

And the sheriff shall then administer to the clerk whom he shall have appointed to assist him in the election an oath for the faithful and impartial discharge of his duty, and shall continue the court open until two of the clock in the afternoon of that day; and on the same day, and as soon after two of the clock as the duties remaining to be performed will permit, shall finally close the court, or adjourn the same to another day, as the case may require.

Proceedings at
sheriff's court.

36. The sheriff shall, at his court, receive the names of the candidates, proposed by two electors of the county, township or electoral division, previously to two o'clock; and their names shall be by the clerk, under the sheriff's direction, entered in the sheriff's record book, and no candidates name shall be entered after two o'clock; and at that hour the sheriff shall proclaim the names of candidates, and shall receive the schedules of and administer the qualification oaths to candidates whose qualifications may be questioned, and who shall not have previously qualified; and in the case of each election, in respect of which, previously to two o'clock, no more candidates are proposed than are required to be returned, the election shall be forthwith determined, and the sheriff shall declare the candidates proposed, and who shall have qualified, if thereto required, duly elected members, and shall make return of the writ accordingly; and in cases of elections where opposing candidates shall be proposed, previously to two o'clock, who shall have qualified, if required, as directed by this chapter, and where a poll has been demanded, the sheriff shall then grant the poll, and make

proclamation of the time and place at which the poll will be taken in the several polling districts, conformably with the notices before conditionally given, and then adjourn the court, as regards the elections in which a poll shall be demanded, to some day within five days next after the day for taking the poll then to be held at the same place.

37. Any candidate proposed at such election may, at any time before one o'clock of nomination day, by writing under his hand, or publicly and openly in the sheriff's court, direct his name to be withdrawn. In which case the entry in the sheriff's record book shall be erased, and the sheriff shall immediately give public notice by proclamation aloud, and thereupon such party shall not be considered as having been proposed as a candidate.

If candidates withdraw.

38. A person capable of being elected a member of the assembly shall be a male British subject of the age of twenty-one years and upwards, and qualified to be an elector under the provisions of this act in some county, township or electoral division of this province, or shall have a legal or equitable freehold estate in possession of the clear yearly value of eight dollars, and any candidate at any election shall, if required, by any other candidate or any elector or the sheriff make before the sheriff the following declaration:

Qualification of candidates.

I, A. B., do declare and testify that I am a British subject of the age of twenty-one years, and that I am duly qualified under the act to regulate the election of members to serve in the general assembly* to be an elector in the county, township or electoral division of this province, and that my right to vote as said elector is in polling district number —— in the county, [*or township or electoral division*] of —— . *If the candidate claims to be qualified as a freeholder, then after the asterisk insert the words "in right of freehold property of the clear yearly value of eight dollars owned by me and described as follows": [here briefly describe the same, setting forth the county or township, or electoral division, where situate, and further particulars.]*

Declaration.

39. The candidate, or any elector for him, may make and subscribe the declaration in the presence of a credible witness, and present it to the sheriff, or it may be made on behalf of the candidate by an elector in presence of the sheriff.

Declaration to be subscribed.

40. If the qualification of a candidate when questioned shall not before the close or adjournment of the court be specified as in the preceding section directed, the candidate shall be incapable of being elected, nor shall his name be entered on the record book, or if entered the same shall be expunged at or before the close or adjournment of the court.

If qualification not specified candidate disqualified.

41. No presiding officer shall receive nor shall any poll clerk record the name of a person as a candidate, nor shall

Votes for candidates, not on sheriff's books to be refused.

any vote be received for him unless his name shall have been entered as a candidate in the sheriff's record book at the court, and shall not have been expunged, and votes entered on a poll book contrary to this provision shall in respect of such person be expunged and not counted by the sheriff in casting up the votes.

Poll, when and where opened, &c.

42. When a poll shall have been granted it shall be opened in the different districts at or near the polling place at eight o'clock in the morning of the day appointed, and be kept open until five o'clock in the afternoon when it shall finally close, and the sheriff shall, prior to the polling, cause booths to be erected, or procure buildings at which the poll may be taken.

Proceedings to take the poll.

43. When a poll has been granted the sheriff shall by precept under his hand appoint a presiding officer for taking the poll in each district, who shall be then resident within the county, and shall have been so for a year then next preceding, and shall thereby direct the presiding officer at the appointed time and place to take the poll within the district as well for the county as the township or electoral division, if such district includes any part of a township or electoral division that is to return a representative, and the sheriff shall also appoint a poll clerk for taking the votes under the direction of the presiding officer in each district, and the clerk shall prepare a poll book and enter therein in separate columns the names of the candidates for whom votes are to be given within the district, and the names of the candidates, and the necessary information regarding them shall before the opening of the poll be furnished by the sheriff to the presiding officers, who shall communicate the same to the electors when required, and the sheriff shall be responsible for the conduct of his presiding officers and poll clerks.

Sheriff may act as presiding officer.

44. The sheriff may act as presiding officer in a district without precept and without taking the presiding officer's oath.

At elections previous to 1864 sheriff shall furnish roll to presiding officer.

45. At any election held before the twenty-fourth day of June, in the year one thousand eight hundred and sixty-four, the sheriff shall furnish the presiding officer of each polling district with the verified copy of roll applicable thereto, received by the sheriff from the clerk of the peace as prescribed by this act.

At subsequent election register to be furnished.

46. At any election held thereafter the sheriff shall furnish the presiding officer of each polling district with a true copy of the register of electors of the polling district for which he is appointed.

Elector to vote in one district only.

47. No elector shall be permitted to vote in more than one polling district in this province on the same day.

Must vote where resident at teste of writ.

48. No elector having at any election a right to vote in the county, township or electoral division in which at the teste of the writ he resided, shall be permitted to vote in any other county, township or electoral division.

49. In any election held before the twenty-fourth day of June, in the year one thousand eight hundred and sixty-four, electors residing within the county, township or electoral division shall vote in the polling district in which their names appear in the list furnished under this act by the clerk of the peace to the sheriff.

At election previous to 1864, electors to vote in districts in which they are named in list.

50. In any such election non-resident electors having a qualification in more than one polling district may at their option vote in either, and any such non-resident elector before he shall be permitted to vote shall, if required by the presiding officer, candidate, or his agent, or an elector, take in addition to the oaths hereafter prescribed the oath following:

Non-resident may vote in any district in which he is qualified.

I, A. B., do swear that at the teste of the writ for this election I resided at ———, in polling district number ———, in the county [*or township, or electoral division, as the case may be,*] of ———. That I am qualified to vote in the said county [*or township, or electoral division, as the case may be,*] and that I have not this day voted in any other polling district in this province.

Oath.

51. Before any elector is permitted to vote he shall state his name and residence, the clerk shall, under the direction of the presiding officer, enter his name on the polling book, and the presiding officer, except in cases within the fifty-sixth and fifty-seventh sections of this act, must find it on the register or assessment roll [*as the case may be*] and mark it.

Name and residence of elector to be entered and marked if on the list.

52. The presiding officer shall, at the opening of the roll, read aloud his precept and declare the names of candidates, and whether for county, township or electoral division, and shall at or before the opening of the poll and before receiving a vote take the following oath:

Proceedings of presiding officer on opening poll.

"I, A. B., do swear that I have not received any sum of money, office, employment, or gratuity, or any bond, bill, or note, or any promise of gratuity by myself or another to my use or advantage for making any return at this election, and that I will faithfully discharge my duty at the election to the best of my knowledge and judgment,* and that I will return to the sheriff a true and faithful account of the votes polled in this district wherein I preside."

And the poll clerk shall before or at the opening of the poll take an oath in the same form down to the asterisk, with the addition of these words thereafter: "and I will faithfully record the votes received in the district where I act as poll clerk."

The sheriff, a justice of the peace, and in their absence any two electors are authorized and required to administer the oaths.

53. The presiding officer shall appoint an inspector, an agent, and a clerk when nominated by or on behalf of a candidate, and their names shall be immediately entered

Inspector, agent, and clerk for candidate, appointment.

in the poll book, and a candidate's clerk shall take the following oath, to be administered by the presiding officer :

Oath.

"I, A. B., do swear that I will take this poll fairly and impartially by entering the names and places of abode of the electors, and the names of the candidates for whom they shall vote."

Votes of presiding officers, clerks, &c., how taken.

54. Presiding officers, polling clerks, candidates and their agents, inspectors and their clerks may poll their votes in the polling district where they are acting, though they are not qualified to vote therein, if on the day of nomination their names are certified and entered as qualified by the sheriff on the poll book, and the sheriff shall strike such names out of the district in which they are qualified to vote. If the presiding officer vote, the poll clerk shall administer the necessary oath to him if required.

Elector's oaths.

55. Every elector, except those voting under the fifty-sixth or fifty-seventh sections of this act, before he shall be permitted to vote shall, if required by the presiding officer, candidate, or his agent, or an elector, take the oaths following, or either of them, to be administered to him by the presiding officer, that is to say :

OATH NUMBER ONE.

"I, A. B., do swear that I am qualified to vote at this election, that I am of the full age of twenty-one years, and am a British subject, that I reside at ———, that I am the person named in the register [*or assessment roll, as the case may be,*] and that I have not before given my vote at this election. So help me God."

OATH NUMBER TWO.

"I, A. B., do swear that I have not received by myself, or another, or any person in trust for me, or to my use, directly or indirectly, any sum of money, office, place of employment, or gift, reward, or any promise or security for any money, office or employment, or gift, in order to give my vote at this election. So help me God."

OATH NUMBER THREE.

"I, A. B., do swear that I have not within twelve calendar months next before this day received aid as a pauper under any poor law of this province, or aid as a poor person from any public grant of government money. So help me God."

Teachers and schoolmasters entitled to vote.

56. At any election held before the twenty-fourth day of June, in the year one thousand eight hundred and sixty-four, licensed schoolmasters who, for six calendar months next before the teste of the writ for holding an election,

shall have been actually engaged in teaching school, professors of colleges, teachers of academies, being of full age and British subjects by birth or naturalization, may vote for the county, township or electoral division in which they reside, provided they shall have been resident in the polling district in which they claim to vote for a period of three months next before the teste of the writ; and any person claiming to vote under this section shall, if required by the presiding officer, candidate or his agent, or an elector, take the second and third oaths prescribed in the fifty-fifth section of this act, and also the oath following:

“I, A. B., do swear that I am qualified to vote at this election, in this polling district, that at the teste of the writ for holding this election, and for the three calendar months then next preceding, I have resided in this polling district, and that I am a professor of ——— college, [*or a teacher of the academy at ———, or a licensed schoolmaster,*] and that during the six months next preceding the teste of the writ for this election I was actually engaged in teaching school in this province.”

57. At any such election where real property has been assessed as the estate of any person deceased, or as the estate of a firm, or as the estate of any person and son or sons, the heirs of the deceased in actual occupation at the time of the assessment, the persons who were partners of the firm at the time of the assessment, and the sons in actual occupation at the time of the assessment, shall be entitled to vote in the same way as if their names had been specifically mentioned in the assessment, and any person claiming to vote under this section shall, if required by the presiding officer, candidate or his agent, or an elector, take the second and third oaths prescribed in the fifty-fifth section of this act, and also the oath following:

I, A. B., do swear that I am qualified to vote at this election, that I am an heir of C. D., deceased, whose property is mentioned in the assessment roll as the estate of C. D., and that at the time of such assessment I was as such heir in actual occupation of my share of the assessed premises, [*or, that at the time of the making of the assessment roll I was a partner in the firm of C. D. & Co., therein mentioned, or, that at the time of the making of the assessment roll I was in actual occupation with C. D. of the property assessed in the roll as the property of C. D. and son, or C. D. and sons.*]

58. Every sheriff or presiding officer who shall on request neglect or refuse to administer any or either of the oaths required to be taken by any elector, shall for every offence forfeit the sum of two hundred dollars.

59. If any person shall fraudulently vote at any election by personating any elector, or being qualified shall vote or offer to vote more than once at any election, for every such offence the person shall forfeit the sum of forty

In case of death of persons assessed on real estate or dissolution of firm, representatives of partners entitled to vote.

Oath.

Penalty for neglect or refusal of sheriff.

Penalty for fraudulent vote or voting twice.

dollars, and it shall be the duty of the sheriff to prosecute therefor.

If elector refuse oath.

60. If an elector when required shall not take the oaths prescribed, his vote shall be expunged.

No delay to take place at polling—questions to be asked.

61. The presiding officer shall prevent unnecessary delay in polling, and no person shall be permitted to interrupt the polling by addressing the electors or otherwise; and for avoiding needless and factious questioning of voters, the elector shall immediately state for whom he votes, and thereupon the candidate against whom he votes, or his inspector or agent, may require the presiding officer to put such necessary and pertinent questions as may be proper for ascertaining the elector's right to vote, and the presiding officer shall allow no other questions to be put, nor shall any questions be put except through him, nor shall he permit the same to be unnecessarily protracted on pretence of questioning a voter; and the presiding officer shall promptly put the questions, and the poll clerk shall instantly enter in the poll book the purport of the answers, and read the same aloud to the voter. If the elector shall not promptly answer the questions his vote shall be expunged, and he shall not be allowed to vote again.

Proceedings of presiding officer on close of poll.

62. The presiding officer, after the close of the poll, and before making return to his precept, shall subscribe in the poll book the following oath, to be administered by a justice of the peace or two electors of the polling district:

"I, A. B., presiding officer for the polling district —, in the county of —, do swear that the poll clerks were duly sworn, and that to the best of my belief this poll book was truly and correctly taken under my direction, and contains a true and correct statement of the votes taken at the poll for the district, held in pursuance of the sheriff's precept, to me directed, and dated the — day of —, in the year of our Lord one thousand eight hundred and —.

Poll book to be sealed.

63. The poll clerk, after the presiding officer shall have taken the oath in the preceding section, shall enclose and seal the poll book, and deliver it to the presiding officer at the poll, who shall give a receipt therefor, and shall forthwith return the same, so sealed, to the sheriff.

Penalty for misconduct of presiding officer.

64. If a presiding officer shall not, when required, administer the oaths to an elector, in a competent state of mind to take them, or shall allow any person to interfere or put questions to voters, by which time is taken up, or shall put questions other than in this chapter specified, contrary to the wish of any candidate, or his agent, or shall wilfully protract, or permit to be protracted, the polling, or shall otherwise offend in the premises, he shall forfeit forty dollars for every offence.

Penalty for not returning or altering poll book.

65. If a presiding officer shall not, before the opening of the sheriff's court on the day to which the same was adjourned, return the poll book or his precept to the sheriff

or shall alter the poll book, he shall be liable to an action for damages at the suit of any party aggrieved, and shall also forfeit for every offence two hundred dollars, and the further sum of twenty dollars for every day's neglect to return the poll book.

66. If a poll clerk shall offend in the premises he shall forfeit forty dollars for every offence.

Penalty for misconduct of clerk.

67. The sheriff at his courts, and the presiding officers at their polling places, shall be, during the day on which the election or polling may be prosecuted, conservators of the peace, and vested with the same powers for the preservation of the peace, and the apprehension and committal for trial, or holding to bail, or trying and convicting violators of the law and good order, as are vested in justices of the peace; and for the purpose of preserving peace and good order at the election or polling, the sheriff or presiding officer may require the assistance of all persons present, and may on view commit any persons for breach of the peace, violating or threatening electors at, or coming to, or returning from, the election or polling, or for any violation of good order, to the custody of any person, for any time not exceeding twelve hours; or may, by a writing under his hand, commit to prison for a like offence for a period not extending beyond the second day thereafter, and at the expiration thereof may cause the offender to be brought before a justice of the peace, who shall enquire into the matter, and may fine the offender in a sum not exceeding eight dollars and costs: and commit him to jail until the fine be paid; and all persons present are enjoined to assist the officer presiding and justices in discharging such duties, under pain of being guilty of misdemeanor; and justices residing in the district, upon being notified in writing by the sheriff or presiding officer, shall attend to aid in preserving peace and order; and the justices, sheriff and presiding officer may, when considered necessary, swear in special constables to act as peace officers, and assist in maintaining peace and order; and upon the written application of a candidate or his agent, or two electors, the sheriff or presiding officer shall swear in such special constables as may be requisite.

Powers of presiding officers, &c.

68. If a presiding officer, before the termination of a poll, shall die, or be incapable of performing, or shall not perform his duty, the poll clerk shall act in his stead and perform his duties; but before commencing his new duties he shall appoint a poll clerk, who shall, with the new presiding officer, previously to entering upon their duties, take the oath prescribed for presiding officers and poll clerks, and they shall have the same powers, and be liable to the same penalties in their new capacities, as if originally appointed.

In case of incapacity of presiding officer.

In case of incapacity of poll clerk.

69. If a poll clerk shall, before the termination of a poll, die, or be incapable of performing, or shall not perform his duty, the presiding officer shall appoint another poll clerk to act in his stead; and the new poll clerk, before entering on his duties, shall take, in manner as if originally appointed, the oath prescribed; and he shall have the same powers, and be liable to the same penalties, as if originally appointed poll clerk.

Proceedings of sheriff's court after the poll.

70. The sheriff shall keep the poll books unopened until the reassembling of his court on the day to which the same shall have been adjourned; and then he shall openly break the seals thereon, and cast up the votes as they appear on the poll books, and shall then openly declare the state of the poll; and if within one hour thereafter any candidate, or two electors, demand a scrutiny of the qualification of any candidate previously qualified, and about to be returned, or protest against the whole election, or return of any member, on grounds to be stated in writing, the sheriff shall enter the same on the record book, and annex a copy thereof to his return, with the writ; and such candidate, or two electors, may, by writing, signify to the sheriff at any time before the next meeting of the legislature, the abandonment of the protest or scrutiny.

Penalty for sheriff making false returns.

71. Any sheriff who shall make a false return, or return more than are required by the writ to be chosen, shall forfeit for every offence the sum of four hundred dollars; and the party aggrieved may also recover the damages he shall sustain thereby, with costs, in an action against him, or any person who shall knowingly procure the same.

Proceedings in case all poll books are not returned.

72. When any of the precepts for taking the poll shall not be returned at the time to which the sheriff's court was adjourned, the sheriff shall not examine the returns made, but shall further adjourn the court to the following day, and so from day to day until the precepts and poll books shall have been all returned; and in making such adjournment the sheriff shall publicly declare the reason, and he shall in no case continue the adjournment if the house of assembly be in session, or to so late a day as shall interfere with the return of his writ in time for the then next session; but he shall in such cases complete the election, and return his writ, notwithstanding the deficiency of returns, and he shall in his return mention the deficiencies.

Return of poll book—how compelled.

73. If a presiding officer shall not have returned his precept and poll book at the proper time, the sheriff or a candidate, or an elector, may make complaint thereof on oath, before a justice of the peace, who shall summon the presiding officer to answer the same; and if he shall not appear and shew good cause for the delay, the justice shall by warrant commit him to jail, until he shall make due return of his precept and proceedings thereon, together with his poll book.

74. A candidate against whom a vote shall be wrongfully polled, or against whom, or to the prejudice, or with the intent to prejudice whose interest, any act shall be wrongfully done, contrary to this chapter, and for which vote or act a forfeiture is herein imposed, may within six months from the commission of the offence, prosecute for the forfeiture, and, upon recovery, the amount, after deducting charges incurred by the candidate about the prosecution, shall be paid to the overseers of the poor for the place where the offence was committed, for the use of the poor thereof. If no prosecution shall be pending, or have been prosecuted to final judgment, then any person may prosecute for the penalty at any time after the expiration of the six months, and before the expiration of twelve months from the commission of the offence.

Penalties, how
prosecuted and
applied.

75. Judgments for penalties under this chapter shall be levied with costs on the goods or lands of the defendant, and for want thereof, or of payment by the defendant, may be levied on his body, and the defendant shall thereupon be committed to jail, there to remain until the judgments be paid, or until he shall have continued in jail for a period proportioned to the amount of the penalty, that is to say: one week for every four dollars thereof; but such imprisonment shall in no case exceed three months.

Judgment, how
levied.

76. Penalties imposed by this chapter shall be recovered with costs as follows: when the penalty shall not exceed forty dollars, it shall be recovered in a summary manner before two justices of the county, from whose judgment either party may appeal to the supreme court on giving good security as follows: in the case of the plaintiff for payment of the defendant's costs, and in case of the defendant for payment of the penalty and costs if judgment shall be given against the appellant; and the supreme court shall try the same, and give judgment in manner practised in summary causes. When the penalty shall exceed forty dollars, the same shall be recoverable by action of debt in the supreme court, in which action it shall suffice for the plaintiff to set forth in his declaration that the defendant is indebted to him in the amount of the penalty sought to be recovered, and to allege the particular offence for which the action is brought, and that the defendant hath therein acted contrary to this act, without mentioning the writ for holding the election, or the return thereof, and on the trial parol proof of the election shall be sufficient prima facie evidence without producing the writ.

Jurisdiction as
to penalties.

Evidence.

77. On the return of a writ the sheriff shall be entitled to receive from the provincial treasury six dollars for every member returned. When there is no contest he shall be entitled to two dollars from every candidate; and where there shall be a contest and a poll demanded four dollars from every candidate instead of two dollars; and further

Sheriff's fees.

- when there shall be a contest there shall be paid to the sheriff by the candidates in just proportions, according to the number of the polling places in which each candidate is interested, the following sums: four dollars for providing a booth or polling place for each polling district, except where the polling place shall be a public building that can be had without charge, four dollars for every presiding officer, and two dollars for every poll clerk, to include their travelling fees; and the fees shall be paid to the sheriff on the day of opening his court for commencing the election; and the name of no candidate shall be entered on the sheriff's poll book, or returned to presiding officers, who shall not have paid or tendered the sheriff the full amount due from him under this section before the adjournment of the court on that day.
- When to be paid** 78. Whoever shall wilfully, falsely, and corruptly make any declaration, oath, or affirmation required by this act, or shall corruptly procure or suborn any other person to make any of them, shall be guilty of perjury, and for every offence incur the penalty of a person guilty of perjury.
- Making false declaration, &c. considered perjury.**
- Quakers may affirm.** 79. Quakers may affirm in any cases where an oath is required.
- Penalty for disobedience to provisions of this act.** 80. If any sheriff, presiding officer, poll clerk, assessor, revisor, clerk of the peace, or other person whosoever, appointed or acting under the authority of this act, shall wilfully contravene or disobey any of the provisions of this act with respect to any matter or thing such person is required to do, and for which default or offence no specific penalty is provided, he shall be liable to the penalty of one hundred dollars, to be recovered in an action at the
- How recovered.** suit of a candidate or elector; and the jury may find their verdict for the full sum of one hundred dollars, or any sum not less than twenty dollars they think just for the offence, and the plaintiff shall have judgment and execution therefor with costs of suit.
- Limitation and form of actions.** 81. Penalties imposed by this act must be prosecuted within four months after the commission of the offence, and may be recovered by action in any court of competent jurisdiction; and the plaintiff may set forth in his declaration that the defendant is indebted to him in the amount of the penalty sought to be recovered, allege the particular offence for which the action is brought, and that the defendant hath therein acted contrary to this act, without mentioning the writ for holding the election, or the return thereof.
- Form.**
- Appropriation of penalty.** 82. The penalty, when recovered, shall be appropriated, one-half to the person who shall sue therefor, and the other half to the treasurer of the county, district or city where the offence was committed, for the use of the county, district or city.

83. On trial of any action or prosecution for any penalty imposed by this act, or any other proceedings arising out of any election, parol proof of the election shall be sufficient prima facie evidence without producing the writ.

Parol proof of election sufficient.

84. The word "sheriff," herein, shall mean sheriff, under sheriff or deputy sheriff; "presiding officer" shall mean the person presiding to take the poll; "county," in cases where a county is divided into two districts for municipal purposes, shall mean such municipal districts; "clerk of the peace" shall include the city clerk, Halifax; "district" shall mean polling district; and "election" the election of members to serve in general assembly, when the sense requires such constructions.

Meaning of terms used in act.

85. Chapters five, seven and eight of the revised statutes, and all other acts inconsistent with this act, are hereby repealed.

Acts repealed.

SCHEDULE B.

We the undersigned revisors, duly appointed for revision section ———, number ———, in the county of ———, do hereby solemnly swear that we will well and faithfully discharge the duties assigned to us, without favor or partiality, that we will place no name on the list of registry, and will strike no name off the same, unless we shall be satisfied that the same, by the law under which we have been appointed as revisors, should be placed on or struck off the same, and that we shall in all respects conform to the said law, to the best of our judgment and ability.

Sworn to at ———, this ——— day of ———, A. D.

Before me,

J. P.

Chapter 20 of the Acts of 1864.

AN ACT CONCERNING THE ELECTION OF REPRESENTATIVES TO SERVE IN GENERAL ASSEMBLY.

1. All elections of representatives to serve in general assembly, held before the twenty-fourth day of June in the year 1865, shall be held under the provisions of chapters 5, 7, and 8, of the revised statutes, second series; and such chapters 5, 7, and 8, and all acts in amendment thereof, are continued and shall remain in force until that date; anything contained in the act passed in the year 1863, entitled, "an act to regulate the election of mem-

Election previous to 24th June, '65, how held.

bers to serve in the general assembly," to the contrary notwithstanding.

2. Whereas, certain clauses of chapter twenty-eight of the acts passed in the twenty-sixth year of the reign of her present Majesty, entitled, "an act to regulate the election of members to serve in general assembly," are inoperative, and no longer required;

And whereas, in some of the counties and districts of the province, the courts of sessions may have neglected at their next meeting after the passing of the act hereby amended, to do the duties incumbent upon them at such meetings, under the provisions of the said act;

And whereas, it may happen that the officers whose duties are prescribed by the said act, or some of them may have neglected to perform such duties within the period prescribed by said act, and it is necessary to amend the same:

Sections repealed.

Be it therefore further enacted, that sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, and 86, of said act, be, and the same are hereby repealed.

Sessions in different counties to proceed to carry out requirements of act passed in 1863.

3. It shall be the duty of the sessions in each of the counties and districts of this province, where not already done, at their next meeting to carry out the requirements of section fourteen of the said act, and the subsequent sections unrepealed; and all officers and persons named or to be appointed thereunder, shall perform the duties required of them, the same way, and under the same obligations and penalties, as if the said act had passed during the present session of the general assembly.

In counties or districts where revisal sessions have not already been laid off, and revisors appointed under section fourteen of the said act, and the sessions with the grand jury attending commence their winter term after the tenth day of January in each year, a special sessions shall be held at the next autumn sittings of the supreme court, which shall divide such counties or districts, if undivided, into revisal sections under section fourteen of the said act; and for each revisal section, the grand jury attending such supreme court shall nominate, and the justices select, revisors, as in the said fourteenth section prescribed, who shall thereupon be sworn, and be duly qualified, as revisors appointed under and by virtue of the said section. The officers so appointed shall perform the duties prescribed by the act hereby amended, at the same times, in the same way, and under the same obligations and penalties, as if appointed at a general sessions, as in the fourteenth section prescribed.

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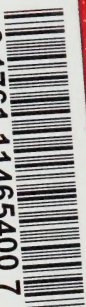
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